

**立法會**  
**Legislative Council**

Ref : CB2/SS/9/10

LC Paper No. CB(2)756/11-12  
(These minutes have been seen  
by the Administration)

**Subcommittee on Nine Amendment Regulations made  
under the Electoral Affairs Commission Ordinance**

**Minutes of the second meeting  
held on Wednesday, 8 June 2011, at 8:30 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)  
Hon WONG Yung-kan, SBS, JP  
Hon LAU Kong-wah, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon WONG Kwok-hing, MH  
Hon CHEUNG Hok-ming, GBS, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon WONG Kwok-kin, BBS  
Hon Paul TSE Wai-chun  
Hon Alan LEONG Kah-kit, SC  
Hon Tanya CHAN
- Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon Priscilla LEUNG Mei-fun  
Hon WONG Yuk-man
- Public Officers attending** : Constitutional and Mainland Affairs Bureau  
  
Mr Arthur HO  
Deputy Secretary for Constitutional and Mainland  
Affairs  
  
Mr Freely CHENG Kei  
Principal Assistant Secretary for Constitutional and  
Mainland Affairs

Mr Thomas WU Kui-wah  
Assistant Secretary for Constitutional and Mainland  
Affairs

Department of Justice

Miss Emma WONG  
Senior Government Counsel

Registration and Electoral Office

Mr LI Pak-hong  
Chief Electoral Officer

Mr Anthony CHAN Shiu-lun  
Principal Electoral Officer

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

**Staff in  
attendance** : Mr Kelvin LEE  
Assistant Legal Adviser 1

Ms Catherina YU  
Senior Council Secretary (2)6

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Meeting with the Administration**

[REO ES/23/52, LC Paper Nos. LS60/10-11, CB(2)1932/10-11(01) and  
CB(2)1993/10-11(01)]

The Administration briefed members on its response to issues raised at  
the last meeting held on 2 June 2011 (LC Paper No. CB(2)1993/10-11(01)).

Action

Scrutiny of detailed provisions of the subsidiary legislation

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to follow up on the issues raised in respect of the sending of notifications to electors and the contents of electronic election advertisements and their dissemination by candidates for submission to the Returning Officers.

Date of next meeting

4. Members noted that the next meeting of the Subcommittee will be held on 14 June 2011 (Tuesday) at 4:30 pm.

**II. Any other business**

5. There being no other business, the meeting ended at 10 am.

Council Business Division 2  
Legislative Council Secretariat  
6 January 2012

**Proceedings of the second meeting of the  
Subcommittee on Nine Amendment Regulations made  
under the Electoral Affairs Commission Ordinance  
on Wednesday, 8 June 2011 at 8:30 am  
in the Chamber of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000439 - 000608	Chairman	Opening remarks	
000609 - 001124	Administration	The Administration's response to the issues raised at the last meeting of the Subcommittee regarding electronic election advertisements ("eEAs") (LC Paper No. CB(2)1993/10-11(01)).	
001125 - 001335	Chairman ALA1	In response to members' concern raised at the last meeting of the Subcommittee, ALA1's advice that according to section 27(1) of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"), written consent was required if a candidate published or authorized the publication of an election advertisement ("EA"). Allowing someone to post messages on websites was not regarded as publishing or authorizing the publication and hence not within the scope of section 27(1) of ECICO. However if a candidate intended to disseminate messages which contained positive comments on him or her to other parties, the candidate might need to obtain written consent from the originators of the messages.	
001336 001726	Chairman Mr LAU Kong-wah Administration	Mr LAU Kong-wah's remarks and enquiries that –  (a) some eEAs might be deleted by the candidates before they were submitted to the Registration and Electoral Office ("REO"). He enquired about how the Administration could ensure that a complete record of eEAs would be submitted; and  (b) whether someone who disseminated eEAs from one website to another was required to obtain consent from the originators of the eEAs.  The Administration's explanation on the existing requirements and arrangements and the proposed improved arrangements for the submission of EAs.	

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		<p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) publications or announcements promoting the election of a candidate was regarded as EAs by law and candidates had to abide by the relevant statutory requirements;</li> <li>(b) the Administration would review whether the requirement on the submission of eEAs should be different from that on the submission of physical-form EAs and would revert to the Panel on Constitutional Affairs ("CA Panel");</li> <li>(c) it was suggested that candidates should keep a copy of eEAs disseminated for future reference; and</li> <li>(d) the dissemination of EAs by candidates was governed by section 27(1) of Cap. 554.</li> </ul>	
001727 - 002031	Chairman Administration Mr LAU Kong-wah	<p>Mr LAU Kong-wah's comments that it was a common practice to disseminate messages on the Internet and that this practice might cause inadvertent non-compliance with the statutory requirements of obtaining the required consent, particularly when it was difficult to ascertain whether a message should be regarded as EA. He enquired about how candidates could comply with section 27(1) of Cap 554.</p> <p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) under the proposed improved arrangements, a more convenient way was provided to candidates to comply with the statutory requirements; and</li> <li>(b) amendments to the relevant provisions of ECICO and the Electoral Affairs Commission ("EAC") Regulations could be considered to cater for eEAs disseminated on the Internet if necessary.</li> </ul> <p>Mr LAU Kong-wah's comments that there should be appropriate publicity on the relevant statutory requirements to minimize possible disputes.</p>	

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002032 - 002304	Chairman Ms Emily LAU	Ms Emily LAU expressed grave concern that a lot of issues relating to eEAs on the Internet remained unresolved and enquired about whether clear guidelines and statutory requirements would be in place before the District Council election in November 2011.	
002305 - 002554	Chairman Administration	<p>The Administration's response that –</p> <ul style="list-style-type: none"> <li>(a) there were clear provisions governing election-related activities and the submission of EAs and candidates had to abide by these provisions;</li> <li>(b) having considered the views of members and some political parties, the Administration had proposed legislative amendments to address their concerns. The legislative amendments would facilitate candidates by providing a more convenient way for candidates to submit eEAs; and</li> <li>(c) regarding whether the requirement on the submission of eEAs should be different from that on the submission of other physical-form EAs, it would touch on primary legislation and should be discussed further by the CA Panel including whether and how the relevant provisions should be amended.</li> </ul>	
002555 - 002706	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's enquiry on the Administration's work plan to address the issues relating to the content and submission of eEAs.</p> <p>The Administration's response that it would –</p> <ul style="list-style-type: none"> <li>(a) try to identify contents of EA which might be difficult to be submitted;</li> <li>(b) make reference to overseas experience in handling eEAs; and</li> <li>(c) strengthen the publicity to enable candidates to have a better understanding on the statutory requirements and the relevant arrangements.</li> </ul>	
002707 - 002948	Chairman	The Chairman's summary on members' concern about the activities on the Internet and ALA1's	

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		advice on the circumstances under which a candidate had to obtain written consent for the publication of EAs.	
002949 - 003309	Chairman Administration Ms Emily LAU	<p>The Administration's remarks and explanation that –</p> <ul style="list-style-type: none"> <li>(a) communication with candidates would be strengthened to ensure that they understood the statutory requirements. Key provisions would be highlighted in the briefing sessions for candidates; and</li> <li>(b) given that the existing definition of EA under the law might not be able to follow closely the rapid development of the Internet, the Administration would conduct a review of the legal framework and revert to the CA Panel on any necessary amendments in due course.</li> </ul>	
003310 - 003726	Chairman Mr Paul TSE	<p>Mr Paul TSE's views and enquiry that –</p> <ul style="list-style-type: none"> <li>(a) in view of the broad definition of EA, the proposed amendments could not plug all the loopholes in handling the submission of eEAs;</li> <li>(b) the Administration would need to allocate more resources to monitor non-compliance with the statutory submission requirement of eEAs;</li> <li>(c) some candidates might be forced to give up the use of technology for election in order not to break the law;</li> <li>(d) the Administration should capitalize on the experience on the administrative and legal regulatory mechanism for eEAs in places, the United States in particular, where the use of eEAs was well-developed as soon as possible;</li> <li>(e) whether the act of a candidate allowing an eEA to be posted by a third party in public websites would be regarded as publishing or authorizing the publication by candidates; and</li> <li>(f) in view of the broad definition of EA by law, candidates might omit the submission of eEAs</li> </ul>	

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		unintentionally and hence committed a legal offence. To avoid the problem, the Administration should consider allowing candidates to provide the links of the websites concerned instead.	
003727 - 003935	Chairman Administration	The Administration's response that the proposed amendments would provide a more convenient way for candidates to submit EAs. The Administration would explore other means of submission of EAs by making reference to the practices adopted in other places.	<b>Admin</b>
003936 - 004331	Chairman ALA1 Mr Paul TSE	<p>ALA1's views that there might be grey areas for eEAs posted on election websites. In his view, eEAs posted on social networking or communication websites might not be regarded as publishing or authorizing the publication by candidates.</p> <p>Mr Paul TSE held a different view with ALA1 urging the Administration to provide clear guidelines in this regard.</p> <p>ALA1's views on the interpretation on publishing from the legal point of view.</p>	<b>Admin.</b>
004332 - 004636	Chairman Mr Paul TSE	<p>The Chairman shared Mr Paul TSE's concern but was of the view that the issues were beyond the scope of the existing exercise.</p> <p>Mr Paul TSE urged the Administration to make use of the opportunity of the review of the relevant legislation to address the issues relating to eEAs.</p>	
004637 - 004959	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's enquiry on the Administration's work plan to address issues relating to the distribution of eEAs and the assistance to be provided to candidates as far as statutory requirements were concerned.</p> <p>The Administration's response that –</p> <p>(a) work would be carried out as soon as possible but it was unlikely that any necessary legislative amendments to ECICO and EAC Regulations could be implemented before the DC election in November 2011; and</p>	



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		(b) the Administration would study the publications of eEAs and messages in different forms on the Internet and seek legal advice if necessary with a view to providing candidates with more information about the statutory requirements concerning declaration and submission of eEAs. The Administration would strengthen the communication with candidates.	
005000 - 005158	Ms Emily LAU	Ms Emily LAU's request that the Administration should make reference to overseas experience and provide examples of different eEAs for candidates' references.	<b>Admin</b>
005159 - 005302	Chairman	<p>Scrutiny of detailed provisions of the subsidiary legislation (LC Paper No. CB(2)1978/10-11(01)).</p> <p><u>Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) Members of Election Committee) Regulation (Cap. 541 sub. leg. B)</u>  <u>Section 2 – Interpretation</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
005303 - 010244	Chairman Administration Ms Emily LAU	<p><u>Section 3 – Form of the functional constituencies register</u></p> <p>The Administration's briefing on the proposed amendments and its response to the Chairman's enquiry that the form of register of electors for the District Council (second) functional constituency ("FC") would be registered in a way by adding symbols in the geographical constituency ("GC") register to denote whether a GC elector was also an elector for the District Council (second) FC.</p> <p>Referring to the proposed new section 3(1A) of Cap. 541B, Ms Emily LAU enquired about the symbol to be used to denote that electors for GCs were also electors for the District Council (second) FC.</p> <p>The Administration's response that the symbol had yet to be decided.</p>	

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005720 - 010354	Chairman Ms Emily LAU Administration	<p>Ms Emily LAU's enquiry on the remedial actions for the omission of the symbol or electors in the registers by mistake.</p> <p>The Administration's explanation on the established practice and procedures for preparing the registers. Provisional registers would be published for electors to check the contents. In case mistakes were found in provisional registers, electors could request for rectifications and the final version of the registers would be updated accordingly.</p> <p>Ms Emily LAU called on the Administration to be more careful in preparing the registers and adopt measures to ensure that electors' particulars would be recorded correctly so that they could vote.</p> <p>The Administration's response that –</p> <p>(a) stringent measures would continue to be adopted to ensure that eligible electors could cast two votes in the coming Legislative Council election; and</p> <p>(b) a letter would be sent to all electors for GCs in early 2012 informing them that they would be regarded as electors for the District Council (second) FC automatically unless they elected not to be registered as electors for that FC. A symbol would not be inserted for the electors for GCs who did not wish to register for the District Council (second) FC.</p>	<b>Admin</b>
010355 - 010552	Chairman Mr Paul TSE Administration	The Administration's response to Mr Paul TSE's enquiry about personal particulars of electors to be included in the registers as stated in section 3(2) of Cap. 541B.	
010553 - 010630	Chairman Ms Emily LAU Administration Mr Paul TSE	<p>Ms Emily LAU's enquiry on when the Administration would decide on the symbol to be used to denote that electors for GCs were also electors for the District Council (second) FC.</p> <p>The Administration's response that the symbol should have regard to the computer programme for the purpose of data entry and would be decided as soon as possible.</p>	

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		Mr Paul TSE's suggestion on using “@” as the symbol.	
010631 - 010715	Chairman Administration	<p><u>Section 5 – Form of the Election Committee register</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
010716 - 010809	Chairman Administration	<p><u>Section 13 – Electoral Registration Officer may send notifications to members of Heung Yee Kuk to compile functional constituencies register</u></p> <p><u>Section 13A – Electoral Registration Officer may send notifications to elected DC members to compile functional constituencies register</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
010810 - 010945	Chairman Administration	<p><u>Section 14 – Electoral Registration Officer may send notifications to natural persons eligible to be registered as electors for functional constituencies</u></p> <p><u>Section 14A – Electoral Registration Officer may send notifications to elected DC members to compile subsector register</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
010946 - 011021	Chairman Administration	<p><u>Section 15 – Electoral Registration Officer may send notifications to natural persons eligible to be registered as voters for subsectors</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
011022 - 011129	Chairman Administration	<p><u>Section 16 – Electoral Registration Officer to register persons in the functional constituencies provisional register or subsector provisional register in accordance with response to a notification</u></p> <p>The Administration's briefing on the proposed amendments.</p>	
011130 - 011305	Chairman Administration	<u>Section 18 – When Electoral Registration Officer cannot register persons under a notification</u>	

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		<p>The Administration's briefing on the proposed amendments.</p>	
011306 - 011737	<p>Chairman Ms Emily LAU Administration</p>	<p>The Chairman's remark that the Electoral Registration Officer should not cancel an elector's registration if the notification sent to the elector had not reached him or her on the basis that the elector had not elected not to be registered or had elected to be registered.</p> <p>Ms Emily LAU's enquiry on the number of cases on unsuccessful delivery of notifications and the reasons for these unsuccessful deliveries.</p> <p>The Administration's response that there were only a small number of unsuccessful deliveries insofar as Section 18 was concerned and its elaboration on the stringent inquiry process before removing any names from the register.</p> <p>The Chairman's remark that there were many cases where electors did not receive the notification although they had never changed their addresses.</p>	
011738 - 012147	<p>Miss Tanya CHAN Chairman Administration</p>	<p>Miss Tanya CHAN's enquiry on –</p> <p>(a) the reasons why notifications could not reach the electors who had been residing in the same address for a long time;</p> <p>(b) whether the Administration had attempted to find out the reasons of unsuccessful deliveries and the actions taken to rectify the problems; and</p> <p>(c) the actions the Administration would take at polling stations to verify the identification of electors whose particulars had been removed by mistake to facilitate them to vote and the service pledge in this regard.</p> <p>The Administration's explanation on the steps to verify the electors' status at polling stations.</p>	
012148 - 012253	<p>Chairman Administration</p>	<p>In response to the Chairman's enquiry, the Administration explained that the proposed amendments to section 18(1) were textual</p>	

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		<p>amendments only and would not affect the existing arrangements.</p> <p>In response to Miss Tanya CHAN's enquiry, the Administration explained that follow-up actions would be taken for complaints concerning electors' information in the registers.</p> <p>The Chairman's request for the Administration to follow up the matter with the CA Panel.</p>	<b>Admin</b>
012254 - 012449	Chairman Mr Paul TSE	Mr Paul TSE's views that having regard to the fact that most electors would not check provisional registers, measures must be taken to ensure that electors' particulars were correctly recorded in the registers. Electors' particulars in the registers should be handled with extreme care. He called on the Administration to act in accordance with the legal intent of section 18 of Cap. 541B that an elector should not be removed from the registers unless he or she had requested so.	
012450 - 012640	Chairman Administration	<p>The Chairman's views that there were a lot of complaints about notifications being sent repeatedly to registered addresses where the electors were in fact not residing there.</p> <p>The Administration's explanation on the procedures to verify the particulars and status of electors and the steps to be taken before removing an elector from the registers.</p>	
012641 - 012820	Mr Paul TSE Administration	The Administration's response to Mr Paul TSE's enquiry on the verification procedures and its explanation that section 18 of Cap. 541B was related to the sending of notification to facilitate electors' registration rather than for the verification procedures.	
012821 - 013004	Chairman Administration	The Administration's response to the Chairman's enquiry on the registration of electors who had moved to a new address.	
013005 - 013033	Chairman	Date of next meeting	
013034 - 013150	Chairman Administration	The Administration informed members that as section 82 of the Electoral Procedures (CE Election) Regulation (Cap. 541J) had made reference to section 81 of Cap. 541J,	<b>Admin</b>

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
		corresponding amendments to section 82 of Cap. 541J had to be made. The Administration would submit the proposed amendments to section 82 of Cap. 541J for the Subcommittee's consideration before the next meeting scheduled for 14 June 2011.	
013151 - 013204	Chairman	Closing remarks	

Council Business Division 2  
Legislative Council Secretariat  
6 January 2012