

立法會
Legislative Council

LC Paper No. CB(2)2664/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/BC/5/11

**Bills Committee on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

**Minutes of meeting
held on Thursday, 29 March 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP

Members absent : Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP

Public Officers attending : Item I
Mr Arthur HO Kin-wah, JP
Deputy Secretary for Constitutional and Mainland
Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland
Affairs (Designate)

Mr Freely CHENG Kei
Principal Assistant Secretary for Constitutional
and Mainland Affairs (3)

Ms Anne TENG Yu-yan
Principal Assistant Secretary for Constitutional
and Mainland Affairs (2)

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Mr Anthony CHAN Shiu-lun
Principal Electoral Officer
Registration and Electoral Office

Mr Gilbert MO Sik-keung
Deputy Law Draftsman (Bilingual Drafting and
Administration)
Department of Justice

Miss Emma WONG
Senior Government Counsel
Department of Justice

**Clerk in
attendance** : Ms Alice LEUNG
Chief Council Secretary (2) 1

**Staff in
attendance** : Ms Wendy KAN
Assistant Legal Adviser 6

Miss Josephine SO
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

Action

I. Meeting with the Administration

(LC Paper Nos. CB(2)1250/11-12(02), CB(2)1510/11-12(01), CB(2)1571/11-12(01) & (02) and CB(3)403/11-12)

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

Admin

2. The Bills Committee requested the Administration to -

(a) in respect of the requirements stipulated respectively in the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") and the electoral legislation for candidates to obtain permission for the display/affixing of printed election advertisements ("EAs") in private premises/shops and to provide the Returning Officer with a copy of the permission obtained, note members' concern over the difference in penalty levels under PHMSO and the electoral legislation for non-compliance with the aforesaid requirements in relation to EAs; and

(b) convey members' views and concerns over the difference in levels of penalty for non-compliance with the requirements in relation to EAs under section 34 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (which only applied to the Heung Yee Yuk and Rural Committee elections) and the relevant regulations made under the Electoral Affairs Commission Ordinance (Cap. 541) to the Home Affairs Bureau for consideration.

3. The Bills Committee completed the clause-by-clause examination of the Bill.

4. The Administration advised that it would introduce Committee Stage amendments ("CSAs") to amend various pieces of electoral legislation, as detailed in the Administration's paper (LC Paper No. CB(2)1571/11-12(02)). The Administration would also propose amendments to the numbering system for the lists of candidates for the District Council (second) Functional Constituency ("DC (second) FC") for the purpose of avoiding confusion to Geographical Constituency electors who were also registered as electors for DC (second) FC when they casted their votes.

Action

II. Date of next meeting

Arrangements for the next meeting

5. The Bills Committee agreed that subject to the readiness of the Administration, the Bills Committee would consider CSAs to be proposed by the Administration at the next meeting scheduled for 11 April 2012 at 8:30 am.

(Post-meeting note: The Administration advised after the meeting that its CSAs might not be ready for the meeting on 11 April 2012. On the instruction of the Chairman, the meeting scheduled for 11 April 2012 was cancelled, and the next meeting of the Bills Committee would be held on Friday, 13 April 2012, at 10:45 am. Members were informed of the above meeting schedule vide LC Paper Nos. CB(2)1615/11-12 and CB(2)1646/11-12 issued on 3 and 10 April 2012 respectively.)

6. The meeting ended at 7:31 pm.

Council Business Division 2
Legislative Council Secretariat
7 August 2012

**Proceedings of meeting of the
Electoral Legislation (Miscellaneous Amendments) Bill 2012
held on Thursday, 29 March 2012, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000627	Chairman	Opening remarks.	
000628 - 005309	Chairman Admin Mrs Sophie LEUNG Mr TAM Yiu-chung Ms Miriam LAU Mr WONG Ting-kwong	<p>Briefing by the Administration on its paper entitled "Proposed Committee Stage Amendments" tabled at the meeting (LC Paper No. CB(2)1571/11-12(02)).</p> <p>Discussion on the Administration's proposal to amend the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A) to allow the voter register to set out the names of the electors in accordance with their principal residential addresses apart from the original format which set out electors in accordance with their names.</p> <p>The Chairman and Mr TAM Yiu-chung considered that the provision of voter register with the names of the electors set out in accordance with their principal residential addresses could facilitate the electors to check any irregular registrations. Ms Miriam LAU was of the view that the proposal would facilitate the electioneering activities of candidates.</p> <p>Mrs Sophie LEUNG expressed reservation about the proposal. She was concerned that the new format might infringe on personal privacy as some electors might not wish to disclose to others whom they lived with.</p> <p>The Administration advised that it had consulted the Privacy Commissioner for Personal Data ("PCPD") on the proposal. PCPD was of the view that the proposal might be within the definition of "election-related purposes" as the proposal would only involve a new sorting sequence and would</p>	

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		not involve disclosure of additional personal data of voters. PCPD considered that the proposal was not inconsistent with Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), which was about the use (including disclosure or transfer) of personal data.	
005310 - 005450	Chairman Admin Clerk	The Administration's response to issues raised in the ALA6's letter dated 22 March 2012 (LC Paper No. CB(2)1571/11-12(01)).	
Clause-by-clause examination of the Bill			
005451 - 005615	Chairman Admin	Object and long title of the Bill	
005616 - 005914	Chairman Admin	Part 1 of the Bill (i.e. clause 1) - short title and commencement of the Bill	
005915 - 010414	Chairman Admin ALA6	Part 2 of the Bill (i.e. clauses 2 to 3) The Administration's briefing on clause 3 which sought to amend section 27 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") to provide that a candidate or person was not required to obtain prior written consent from those who provided support in the election advertisements ("EAs") if the candidate or person had neither requested or directed nor authorized any other person to request or direct the inclusion of the support in the EAs.	
010415 - 013043	Chairman Admin Mr TAM Yiu-chung Mr WONG Ting-kwong Mrs Sophie LEUNG ALA6	Part 3 of the Bill (i.e. clauses 4 to 30) The Administration advised that the clauses were to - (a) amend the Electoral Affairs Commission Ordinance (Cap. 541) to empower the Electoral Affairs Commission ("EAC") to make regulations ("EAC regulations") providing for matters relating to grant of relief by the Court of First Instance ("CFI") in respect of EAs; (b) amend various EAC regulations to specify the requirements applicable to EAs; and	

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		<p>(c) make technical amendments to the Electronic Transactions (Exclusion) Order (Cap. 553 sub. leg. B) ("ETEO") and ECICO.</p> <p>In response to members' enquiries, the Administration advised that any form of publications, including performance report, published or distributed by an incumbent candidate during or before the election period would also be regarded as EAs, if they were published for the purpose of or had the effect of promoting or prejudicing the election of a candidate or candidates at the election.</p>	
013044 - 014235	Chairman Admin ALA6	<p>Clause 8 - the proposed new section 105 to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)</p> <p>The Administration's briefing on the relevant submission requirements that a candidate who published an EA must comply with under the proposed new section 105 and its response to enquiries on the operation and maintenance of the proposed Central Platform and the Candidate's Platform.</p>	
014236 - 015400	Chairman Admin ALA6 Mrs Sophie LEUNG	<p>Clause 8 - the proposed new section 106 to Cap. 541 sub. leg. D relating to the grant of relief by CFI in respect of EAs</p> <p>The proposed new section 106 provided that a person who published an EA without complying with the requirement as set out in the new section 105(1)(a) or (4) might apply for relief to CFI.</p> <p>ALA6 enquired about the reason why a person who published an EA without complying with the proposed new section 105(1)(b) or (c) was not entitled to apply to CFI for relief.</p> <p>The Administration explained that for permission obtained for the purposes of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") and the consent referred to in subsection (1A), (1B),</p>	

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		<p>(2A) or (2B) of section 27 of ECICO, there was no arrangement for a candidate to apply for Court relief under the existing ordinances and regulations concerned. The Administration therefore proposed to follow the existing arrangement under which a person was not entitled to apply to CFI for relief in relation to the permission and consent mentioned above.</p> <p>The Chairman noted that if a candidate failed to seek permission from owners or occupiers of private premises or shops before they displayed or affixed EAs in their places, he would commit an offence under PHMSO. The existing electoral legislation required the candidate to provide the Returning Officer ("RO") with a copy of the permission obtained. Under the proposed arrangements on the regulation of EAs, apart from providing RO with a copy of the permission, the candidate could post the permission onto the Central platform to be maintained by the Registration and Electoral Office or his own election platform for public inspection. If a candidate met any one of such requirements, he would not be regarded as committing an offence under the relevant EAC regulations.</p> <p>The Chairman and Mrs Sophie LEUNG expressed similar concern about the difference in penalty levels under PHMSO and the electoral legislation for non-compliance with the requirements in relation to EAs.</p>	<p>Admin to take note of members' concern (Para. 2(a) of the minutes refers)</p>
015401 - 020312	Chairman Admin ALA6	<p>Clauses 9 to 22</p> <p>Similar amendments proposed to other EAC regulations.</p>	
020313 - 021020	Chairman Admin	<p>Clauses 23 and 24</p> <p>Amendments proposed to ETEO.</p>	

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021021 - 021555	Chairman Admin ALA6 Mr TAM Yiu-chung	<p>Clauses 25 to 30</p> <p>Proposed amendments to sections 2, 4, 16, 28, 33 and 34 of ECICO.</p> <p>ALA6 pointed out that clause 26 proposed to add a new section 4(2) to ECICO to the effect that Part 5 of ECICO would only apply to an election to elect members of the Heung Yee Kuk ("HYK") and an election to elect a person as the Chairman/Vice-Chairman/member of the Executive Committee of a Rural Committee ("RC"). Accordingly, the offence for non-compliance with the requirements in relation to EAs under section 34 of ECICO only applied to HYK and RC elections.</p> <p>The Administration responded that -</p> <p>(a) to consolidate the regulatory regime and simplify the arrangements for handling EAs, the Bill proposed to transfer the relevant provisions from ECICO to the EAC regulations so that all relevant provisions on EAs could be grouped in the EAC regulations. The Bill proposed that irrespective of whether the advertisement was a printed EA or in other forms, if a candidate contravened the proposed requirements in relation to EAs, the penalty should be aligned at the current level provided for in the relevant EAC regulations for failing to comply with the existing requirements regarding the declaration and submission of EAs; and</p> <p>(b) HYK and RC elections were presently not under the regulation of EAC and a review on the penalty for offences in relation to EAs in respect of these elections was outside the scope of the current legislative exercise. The Home Affairs Bureau ("HAB") which was the policy bureau for matters relating to HYK and RC elections would conduct a review regarding these elections.</p>	

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		The Administration was requested to convey members' views and concerns over the difference in levels of penalty for non-compliance with the requirements in relation to EAs under section 34 of ECICO (which only applied to HYK and RC elections) and the relevant EAC regulations to HAB for consideration.	Admin to convey members' views and concerns to HAB for consideration (Para. 2(b) of the minutes refers)
021556 - 021954	Chairman Admin	Part 4 of the Bill (i.e. clauses 31 to 35) Amendments to the Legislative Council Ordinance (Cap. 542) to reflect the change of names, and deletion of constituents of certain functional constituencies.	
021955 - 022024	Chairman Admin	Part 5 of the Bill (i.e. clauses 36 and 37) Amendments to the Chief Executive Election Ordinance (Cap. 569) to reflect the change of name of a constituent of the Higher Education Subsector.	
022025 - 023527	Chairman Admin Mr TAM Yiu-chung	Part 6 of the Bill (i.e. clauses 38 to 52) Amendments to various EAC regulations to improve the electoral procedures for various elections.	
023528 - 024900	Chairman Admin Mr WONG Ting-kwong	Part 7 of the Bill (i.e. clauses 53 to 65) Amendments to Cap. 541 sub. leg. D to provide for the counting arrangements for the District Council (Second) Functional Constituency ("DC (second) FC").	
024901 - 024940	Chairman Admin	Part 8 of the Bill (i.e. clauses 66 and 67) Technical amendments to ECICO.	
024941 - 025137	Chairman Admin	Completion of clause-by-clause examination of the Bill.	
025138 - 030116	Chairman Admin Mr TAM Yiu-chung Mr WONG Ting-kwong ALA6	The Administration's plan to propose Committee Stage amendments to the Bill, including the amendments to the numbering system for the lists of candidates for the DC (second) FC. Scheduling of next meeting.	

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