

立法會
Legislative Council

Ref : CB2/PL/CA

LC Paper No. CB(2)1970/11-12
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 19 December 2011, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, SBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

- Members attending** : Hon KAM Nai-wai, MH
Hon Albert CHAN Wai-yip

Members absent : Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon WONG Yuk-man

Public Officers attending : Item III

Mr Raymond TAM Chi-yuen
Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

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

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

Mr Eddie NG Sik-hay
Deputy Chief Electoral Officer (Operations)
Registration and Electoral Office

Ms Roxana CHENG Pui-lan
Deputy Solicitor General (Constitutional)
Department of Justice

Item IV

Ms Adeline WONG Ching-man
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mrs Philomena LEUNG
Principal Assistant Secretary
(Constitutional and Mainland Affairs)

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Carrie WONG
Assistant Legal Adviser 4

Miss Cindy HO
Senior Council Secretary (2)3

Ms Wendy LO
Council Secretary (2)3

Mrs Fonny TSANG
Legislative Assistant (2)3

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I. Information papers issued since the last meeting
[CMAB C1/30/2/1/1/1 and LC Paper No. CB(2)589/11-12]

Members noted that the following papers had been issued since the last meeting –

- (a) Consultation Paper on Review of Regulation on Election Advertisements issued by Constitutional and Mainland Affairs Bureau ("CMAB") [CMAB C1/30/2/1/1/1]; and
- (b) Guidelines on Election-related Activities in respect of the Chief Executive Election [LC Paper No. CB(2)589/11-12].

II. Items for discussion at the next meeting
[LC Paper Nos. CB(2)605/11-12(01) and (02)]

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2. Members agreed to discuss at the next regular meeting scheduled for 16 January 2012 the following items proposed by the Secretary for Constitutional and Mainland Affairs ("SCMA") –

- (a) Establishment of the Office of the Chief Executive-elect; and
- (b) Practical Arrangements for the Election of the Fourth-term Chief Executive.

3. The Chairman said that the meeting would be extended to 5:30 pm to allow sufficient time for discussion of all items on the agenda.

III. Review of the voter registration system

[LC Paper Nos. CB(2)591/11-12(01) and CB(2)605/11-12(03)]

Briefing by the Administration

4. At the invitation of the Chairman, SCMA introduced the Administration's paper [LC Paper No. CB(2)591/11-12(01)], which set out the possible improvement measures to the existing voter registration ("VR") system. SCMA said that all these new measures would incur a lot of work for the Registration and Electoral Office ("REO"), which had set up a special team headed by a Deputy Chief Electoral Officer to take forward the work. The Administration would provide the necessary resources to REO. He assured members that the Administration attached utmost importance to safeguarding the integrity of the VR system. REO and the law enforcement agencies would handle any suspicious cases related to VR seriously and in accordance with the law.

5. Chief Electoral Officer ("CEO") then elaborated on how the proposed requirement of address proof would be administered with effect from 1 January 2012 in order to enhance the existing checking performed by the Electoral Registration Officer ("ERO"). He said that REO would accept address proof commonly used by the general public, including electricity, water and gas bills, and the correspondence issued by the Government, banks, recognized organisations etc. as proof. For a person who could not provide address proof, REO would also accept rental receipts, resident cards, and the address proof of another inhabitant who resided at the same address as proof. However, an inhabitant should furnish a signed declaration to prove that he resided at the same residential address. An alternative was

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for the person to make a statutory declaration before a Commissioner of Oath, a solicitor or a Justice of Peace for oath that he resided at the residential address he provided. While it was legally in order for ERO to seek further information or proof when processing a VR application under the existing legislation, consideration would be given to making the requirement statutory where appropriate.

6. Members also noted the background brief entitled "Review of the VR system" [LC Paper No. CB(2)605/11-12(03)] prepared by the Legislative Council ("LegCo") Secretariat.

Discussion

Inadequacies of the existing VR system

7. Members in general expressed dissatisfaction with the work of REO for having failed to perform its functions conferred by laws to ensure the accuracy and integrity of the voter register. They stressed that any suspected cases of vote planting should be seriously handled by the law enforcement agencies in accordance with the laws and every effort should be made to restore the public's confidence in the electoral system before the impending LegCo election in September 2012.

8. Mr KAM Nai-wai expressed concern that as electors would be allocated to the respective geographical constituencies ("GCs") or District Council ("DC") Constituency Areas ("DCCAs") in accordance with their reported residential addresses, it would have a significant bearing on the election results in respect of a DCCA with a relatively small electorate base. Mr Ronny TONG urged that additional resources should be provided for implementing remedial measures to verify the accuracy of the voter register as soon as possible. Dr Margaret NG considered that REO should have verified the reported residential address for any application for VR and electors should be required to produce their poll cards before voting. Ms Miriam LAU said that it was not uncommon to find that electors had already moved out from their reported registered addresses when candidates were conducting home visits to public housing estates for electioneering. Ms LAU expressed dissatisfaction that the issue had remained unresolved for so many years. Mr IP Kwok-him expressed a similar concern, adding that the Administration should step up its enforcement action in order to achieve the deterrent effect.

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9. Given that the lodging of an election petition was subject to a statutory time-frame under the electoral legislation (i.e. within two months following the date of publication of the result of the elections in the gazette), Ms Audrey EU and Mr Alan LEONG asked when the investigation of those suspected vote planting cases which had been referred to the law enforcement agencies would be completed. They were concerned that any delay in investigation would affect the right of an unsuccessful candidate to lodge an election petition.

10. CEO explained that REO would follow up on the complaints received and the cases reported by media as soon as possible. As at 16 December 2011, REO was handling cases which involved around 3 800 electors. Apart from those which required no further action, REO had issued some 1 200 inquiry letters to the electors concerned, and requested them to provide valid address proofs within seven days. If the electors concerned did not respond or provide valid address proofs, REO would refer the cases to law enforcement agencies for follow-up.

11. Mr Albert CHAN said that the problem of vote planting was long-standing and a case was known to him back in 1986 with 35 electors being registered under the same address. He enquired about the prosecution statistics. CEO replied that from 2007 till present, REO had referred some 200 cases to the Police and the Independent Commission Against Corruption ("ICAC") for investigation. At the request of Mr Albert CHAN, the Administration agreed to provide prosecution statistics over the past years on offences in relation to registered electors providing false address information to ERO.

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Proposed improvement measures to the VR system

12. Mr WONG Yung-kan, Mr LEE Wing-tat and Mr Paul TSE expressed support for the proposed improvement measures to improve the existing VR system. Mr LEE suggested that the Administration should avoid specifying any threshold for conducting enhanced checking. Mr Paul TSE and Ms Emily LAU considered that cases of providing incomplete address information should be handled differently from those of suspected vote planting.

13. Mr Albert CHAN was of the view that any new measure should not cause inconvenience to eligible electors. He opposed the imposition of the proposed requirement of address proof on VR applicants. He further

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suggested that a VR applicant should be requested to authorize REO to cross check against the address information supplied for his application for smart identity card.

14. Mr IP Kwok-him had reservation about the proposal for making it an offence for failure to report change in registered address in VR records by electors. He cautioned that any new measure should not unduly inconvenience the public, and he was mindful that the requirement of address proof might affect the desire of the public to apply for VR and to vote. Mr IP considered it more appropriate to impose the requirement only when random checks were conducted. He stressed that publicity effort should be stepped up to educate the public on the need to update residential addresses in the voter register.

15. On publicity measure, Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") said that the Administration planned to send a letter to all of the three million registered electors in early 2012 to appeal to them to update their residential addresses if there was any change and electors were welcomed to report any anomaly (such as non-existent addressees) to REO. As a measure to confirm the validity of the address, Mr IP suggested that the Administration might consider requesting the registered elector to respond to the letter and REO should follow up on those cases for which no reply had been received. DSCMA advised that a new round of VR campaign for the DC (second) functional constituencies ("FC") election would commence in early 2012.

16. Mr Ronny TONG suggested that the period of public inspection of the provisional register be extended to two months to allow ample time for candidates and parties concerned to verify the records therein; and that the voter register for public inspection (which now set out the electors' names followed by their residential addresses) should also set out the electors according to their residential addresses for the public to identify irregularities in respect of residential addresses. He further suggested that REO should assist the public in making requests for inspection of the voter registers. Mr Albert CHAN and Mr IP Kwok-him supported the suggestion of setting out the voter register according to the residential addresses as it would be conducive to identification of irregularities. Mr Paul TSE suggested that the Administration might make reference to the land register kept by the Land Registry for setting different deadlines to cater for new registration and updating of existing records respectively.

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17. SCMA advised that extension of the inspection period would result in advancing the statutory deadlines for new registration and reporting change of addresses to allow sufficient time for REO to complete the checking and verification processes. He undertook to look into the suggestion of setting out electors in the voter register according to their residential addresses (in addition to the existing statutory requirement of publishing the voter register by setting out the electors' names followed by their residential addresses). He assured the meeting that REO would have the resources to deal with the related issues. CEO said that flexibility had been exercised all along to facilitate eligible persons to register and preserve their voting rights based on a self-declaration system. However, in order to guard against any abuse of the electoral system, cases with reasonable doubts would be handled strictly. With the introduction of the proposed measures, the integrity of the VR system would be enhanced. CEO said that there were preliminary plans to extend the public inspection period of provisional register and to allow more time for hearing of objections and claims in respect of entries in the provisional register.

18. Ms Emily LAU stressed that the Administration should provide REO and law enforcement agencies with sufficient resources to deal with the vote planting problem. She was disappointed that in view of the impending LegCo election in September 2012, the Administration had failed to provide a timetable to ensure that practical measures and legislative amendments would be made in a timely manner to maintain the integrity of the electoral system.

19. SCMA responded that the law enforcement agencies were committed to providing full support to deal with any suspicious cases. The workload and manpower needs of REO would vary depending on whether it was an election year or not. He reiterated that REO would have the manpower to deal with the work pertaining to the new administrative measures through internal deployment of some 20 staff to REO to meet the immediate needs, and the CMAB was committed to the provision of additional resources to REO upon its request.

20. Mr Albert HO said that he was inclined to supporting the advancement of the deadline for the compilation of the provisional register to allow for a more meaningful public scrutiny. He sought clarification on whether an application for VR with an address proof containing a communal address or incomplete address information would still be processed if the improved measures were introduced. He urged that outdated records of

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electors with registered residential address in public housing estates should be rectified as soon as possible in consultation with the Housing Department. He also clarified whether a representative from REO would be present in the hearing of objections and claims in respect of entries in the voter register.

21. CEO clarified that the CD-ROM received by candidates contained only electors' addresses for the purpose of sending election-related materials, which might include a postal address of the registered elector. However, the use of a postal address was no longer allowed for new registration or reporting change of a residential address from 2009 onwards unless there was no postal service available for the elector's residential address. REO was in liaison with the Housing Department on how to follow up expeditiously on changes of addresses of registered electors residing in public housing estates. CEO added that a representative from REO would be present in a hearing as an interested party for presenting evidence to support the case.

22. Ms Audrey EU and Mr Paul TSE were of the view that the Administration should not go from one extreme of turning a blind eye to the loopholes of the VR system to another extreme of introducing overly stringent measures to tighten up the system. Ms EU emphasized the need to protect the fundamental right to vote as guaranteed under the Basic Law and queried how the Administration would address a claim by a person that he was denied of the right to vote because of the new measures. Ms EU further enquired whether the past arrangement for electors to produce their poll cards before they were allowed to vote was a statutory requirement. Ms EU also considered that a random checking of 3 to 5 per cent of the electors on the final register out of the 3.56 million registered electors was inadequate.

23. SCMA explained that the requirement for producing poll cards by the electors in order to vote was removed in order to minimize the inconvenience to electors who might have forgotten to bring along their poll cards. CEO said that while there had been doubtful instances where electors' residential addresses were found to be a factory, store, or even cinema, REO would verify the eligibility of the electors concerned through making telephone enquiries and provision of an address proof from the electors concerned was not necessarily required. CEO also confirmed that it was legally in order under the existing legislation for REO to make such enquiries and request for provision of documentary proof. However, flexibility would be allowed when accepting the type of documents as

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address proof. The Chairman expressed doubt as to whether REO could exercise such discretionary power under the existing legislation and whether the requirement of address proof for any new application for VR might be subject to legal challenge. CEO said that legislative amendments to the relevant electoral law would dispel any doubt in this respect.

24. Mr Alan LEONG considered that producing a poll card for voting would prevent effectively against the occurrence of some vote planting cases. He enquired whether the requirement of producing a poll card by the elector at the polling station was removed in order to boost the turnout rate. He was also concerned that the information on the final register would be a bit outdated if the statutory deadline for the compilation of the provisional register was to be advanced.

25. SCMA explained that the need to allow adequate time for public inspection was the prime concern in setting the existing statutory deadlines for VR and any extension of the time for public inspection would lead to advancing the deadline for new registration and updating of reporting change of registered particulars. As regards the present arrangement requiring voters to produce their identity cards but not their poll cards at the polling stations in order to cast their votes, SCMA advised that some might consider the requirement of producing poll cards for voting as jeopardizing an eligible person to exercise his right to vote, and its implication would have to be fully considered if the requirement was to be re-introduced.

26. Dr Margaret NG expressed strong objection against the proposed introduction of penalty for registered electors who failed to report change of address given that a person's failure to report his change of residential address for his smart identity card did not constitute an offence. She commented that even if a person did not update his residential address, he would still be entitled to cast one vote only and it did not affect the integrity of the GC electoral system. Mr Paul TSE considered it necessary to allow a registered elector to apply for de-registration if a penalty was to be introduced for failure to report change of addresses in the voter register.

27. SCMA replied that REO had the responsibility to verify the eligibility of an elector by ascertaining whether his residential address provided in his application form was his only or principal residence in Hong Kong. REO therefore proposed to introduce the requirement of address proof for application of VR or a change of residential address of an elector. Responding to Dr NG, CEO said that an applicant was required to declare in

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the registration form that the information provided therein was correct, and it was therefore justified for REO to require an applicant to furnish supporting evidence to prove his residential address so declared.

28. Ms Miriam LAU said that it was incumbent on REO to discharge its role as the gatekeeper in ensuring accuracy of the voter register. As voting in an election was a fundamental right, any new measure should not create undue nuisance and disturbance to the public. She was concerned that some eligible voters who were not property owners of the addresses would have difficulties in producing address proofs, and that there could be loopholes if certain documents would selectively be accepted as address proof. She informed members that the Liberal Party had conducted an opinion poll to gauge the sentiment of the public. According to the findings, views were split over the proposal to introduce penalty for electors not updating their registered addresses, with 44.1% supporting the proposal and 42.6% against. As regards the proposal for conducting random checks where supporting evidence would be sought, 48.9% supported the proposal and 38% against. The Chairman requested the Administration to consider the findings provided by Ms LAU.

29. Mr WONG Ting-kwong enquired whether a certified true copy of an address proof would be accepted for the purpose of verification; and if a property owner had more than one property, whether he might use any one of them as residential address for the purpose of VR. Ms Cyd HO suggested that REO should not entertain requests for change of address by fax and should make free postage available for such purpose.

30. CEO advised that for the convenience of electors, REO would allow a request for change of address to be made by fax and accept a photocopy in compliance with the requirement of provision of address proof. Action would be taken to verify the address proof with the assistance of the Rating and Valuation Department ("RVD") and the Housing Department. CEO added that according to legal advice, application by fax should be considered valid if the information provided therein was legible.

31. Mr Paul TSE suggested that personal particulars of Hong Kong permanent residents collected by different government departments for designated purposes (including the smart identity cards, the driving license and VR etc.) should be centrally administered to enable a corresponding updating of the personal particulars of the same person furnished to any one of the government departments. For the sake of democratic development,

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eligible persons would only need to produce their smart identify cards to cast their votes on the polling day. The Chairman asked if the particulars supplied by an elector to other departments could be used in a data matching procedure. SCMA said that any data matching would have implication on the protection of personal data and the endorsement of the Privacy Commissioner for Personal Data would be required to avoid any breach of the Personal Data (Privacy) Ordinance (Cap. 486).

32. Mr LAU Kong-wah pointed out that of the 85 cases of irregularities identified in Director of Audit's Report No. 47 issued in October 2006, none was found to have involved illegal conduct according to the findings of REO. Ms Cyd HO enquired whether and how REO would detect any irregularities relating to VR and whether internal guidelines for dealing with the irregularities had been issued to staff of REO. CEO said that since 2006 REO had examined the final register every year and identified all the registered addresses with seven or more electors; and staff members were advised on how to follow up on cases of irregularities. Responding to Ms HO on the scope of the random check, CEO replied that it was intended to cover 3 to 5 per cent of all electors on the final register out of the 3.56 million registered electors.

33. Mr KAM Nai-wai found the proposed random checking rate of 3 to 5 per cent was grossly insufficient and suggested a full-scale checking by conducting a territory-wide household visit, say every 10 years, on a regular basis to help confirm the validity of the residential address of registered electors. SCMA said that the Administration hoped to introduce measures within the existing mechanism in the first place and considered that the proposed new measures would prevent some possible abuses. Besides, conducting a territory-wide household visit might not be cost-effective and some residents might find it a nuisance.

34. Mr LEE Wing-tat, however, considered that there were merits in carrying out territory-wide household visit which was last conducted in 2000 by the Home Affairs Department in order to achieve the twin objectives of promoting VR and checking the validity of the residential addresses in the voter register, and provision of additional resources, if necessary, to undertake the task should well be justified. He also suggested that the percentage of conducting random check should be increased substantially, given the importance of the LegCo election in September 2012. SCMA noted the view and clarified that the household visit conducted by the Home Affairs Department was part of the VR campaign to promote registration and

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doubt was raised on its effectiveness. CEO added that the last exercise was only a publicity measure and not for verification of residential addresses in the voter register.

35. Mr LAU Kong-wah said that any new measure so introduced should be proportionate to the problem. He said that the requirement for producing address proof might pose difficulties to those living in cubicle apartments and the need to make an oath declaration would be too troublesome to employees who would need to work long hours. Mr LAU considered that it would be prudent to solicit public views before introduction of the new measures proposed by the Administration.

36. Mr KAM Nai-wai was concerned about buildings already demolished before the DC elections held in November 2011 and enquired whether electors who were yet to report change in their addresses would still be eligible to cast their votes. CEO replied that there was indeed a lead time in processing the information supplied by RVD and Buildings Department; upon a recent review, REO would also make enquiries on such information (including buildings demolished in the past two years and buildings to be demolished in the next few months) and any information which would help identify electors who might not have reported changes in their addresses. These electors would then be requested to submit a valid address proof.

Meaning of "ordinarily resident in Hong Kong"

37. Dr Margaret NG referred to the requirement under the Legislative Council Ordinance (Cap. 542) that an eligible voter should be "ordinarily resident in Hong Kong". She enquired whether and how REO would ascertain whether the address supplied by an elector was his only or principal residence in Hong Kong; and whether if a person had emigrated, there was any restriction on his eligibility to vote. Ms Cyd HO and Mr LEE Wing-tat expressed a similar concern, saying that an elector who had retired to the Mainland might not be able to fulfill the requirement in the absence of a valid residential address in Hong Kong. Mr WONG Yung-kan further enquired about the eligibility of an elector to vote if he was living on the Mainland but had reported the residential address of his sons and daughters for the purpose of his VR record. Dr Priscilla LEUNG observed that the concept of "the last dwelling place" was used in the definition of principal residence in Hong Kong for the purpose of VR by prisoners. She suggested to use it as a reference.

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38. SCMA said that the subject matter was not covered in the Administration's paper but the right to vote of permanent residents was protected under the Basic Law. Deputy Solicitor General (Constitutional) said that an eligible elector should be ordinarily resident in Hong Kong under the electoral legislation but there was no statutory definition of the term "ordinarily resident". She went on to explain the policy intent for the requirement, such that an eligible elector would have an adequate knowledge of community and local affairs. Ms Audrey EU stressed that it was a fundamental issue and the Administration needed to clarify as soon as possible. The Administration was requested to conduct a thorough study and invite views from the public.

Updating of different voter registers

39. Mr WONG Ting-kwong noted with concern that updating the address records of an elector of the DC election could not lead to a corresponding updating in the register for the Election Committee ("EC") subsector election. CEO explained to the meeting that the respective registers of electors for FC and GC would be updated separately; while the EC subsector election would share the same register as the FC election. Mr WONG Ting-kwong requested the Administration to publicize the need for an eligible elector to report change of his residential address for the purpose of different voter registers.

Way forward

40. SCMA advised the Panel that the Administration would take into consideration members' views in reviewing the VR system, and would work with LegCo to take forward the necessary legislative amendments. Before any amendment was made to the relevant legislation, the Administration planned to implement the proposed administrative measures with effect from 1 January 2012 and conduct further consultation on other proposed measures which would involve legislative amendments.

41. Ms Emily LAU considered that it would facilitate the future legislative process if a thorough public consultation exercise would be conducted on the legislative proposal. Responding to the Chairman on the Administration's plan for a public consultation, SCMA said that the Administration would issue a consultation paper in early 2012 to invite views from the public on the proposed measure before introducing the relevant legislative proposal. The Chairman proposed and members agreed

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that the Panel should hear public views at a future meeting when the consultation paper was issued.

(Post-meeting Note: The Administration issued its Consultation Paper on Improvement Measures of the Voter Registration System on 16 January 2012 which was issued to members on the same day vide CMAB S/F(1) C1/30/6. A special meeting was scheduled on 17 February 2012 to hear public views on the consultation paper.)

IV. Consultation paper on stalking

[LC Paper Nos. CB(2)605/11-12(04) and (05)]

42. Under Secretary for Constitutional and Mainland Affairs ("USCMA") gave a power-point presentation on the key elements of the proposed legislation on stalking as set out in the Administration's paper [LC Paper No. CB(2)605/11-12(04)]. Members noted that the Administration would conduct a public consultation exercise on the recommendations in the Consultation Paper on Stalking ("Consultation Paper") which would last until 31 March 2012.

43. Members also noted the background brief prepared by the LegCo Secretariat on the subject matter [LC Paper No. CB(2)605/11-12(05)].

(The Chairman proposed at this juncture to extend the meeting for 15 minutes to allow more time for discussion of this item.)

Discussion

44. Ms Audrey EU and Mr Paul TSE welcomed the Administration's publication of the Consultation Paper on the recommendations made by the Law Reform Commission ("LRC") in the Report on Stalking. Ms EU enquired whether the Police would follow up proactively on the investigation and prosecution relating to stalking after the enactment of the anti-stalking legislation. She also sought clarification on whether public demonstrations and picketing activities of trade unions were covered by the defences under the proposed legislation.

45. USCMA responded that an internal working group comprised of representatives of Department of Justice, the Security Bureau and the Police had been set up to consider the LRC's recommendations and the Police had

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agreed to be the law enforcement agency for investigating complaints related to stalking after enactment of the legislation. She added that the reasonable pursuit of the course of conduct in the particular circumstances was one of the defences provided for in the proposed legislation. Industrial actions and public demonstrations which proved to be a reasonable course of conduct in the circumstances would be covered by the proposed defence.

46. Expressing concern about the impact of the proposed legislation on press freedom, Mr LEE Wing-tat considered that a specific defence for news-gathering activities should be provided for in the legislation so that legitimate news-gathering activities of political activities which were not conducted publicly would not be affected. USCMA said that it was understandable that front-line journalists would sometimes pursue a course of conduct persistently in trying to solicit responses from a target. LRC, however, took the view that "legitimate news-gathering activities" were already subsumed under the defence of "reasonable pursuit" proposed. She assured members that in order to constitute the offence of stalking, a person had to pursue a course of conduct which amounted to harassment to cause another person alarm or distress, and which he knew or ought to have known amounted to harassment of the other. A defence that the pursuit of the course of conduct was reasonable in the particular circumstances had also been proposed in the legislation.

47. Ms Cyd HO echoed the concern about press freedom. She opined that whether a person felt "alarmed" or "distressed" by a course of conduct was very subjective. She suggested that, instead of having a single piece of anti-stalking legislation, the Administration should consider introducing separate legislative measures to deal with specific problems, such as introducing legislation to deal with stalking behaviors relating to domestic violence and debt collection practices. USCMA responded that to legislate against stalking in a specific context would not resolve entirely the problem because many stalkers (e.g. those having psychological problem) bore no relation to the victims. The Administration considered it appropriate to enact legislation against stalking in general. She added that the Administration was open-minded about whether "legitimate news-gathering activities" should be subsumed under the "reasonable pursuit" defence as recommended by LRC or be made a separate defence, and how such a defence should be framed. The Administration would consider the public views received on these issues in proposing the way forward.

48. Mr IP Kwok-him considered it acceptable to have "legitimate news-gathering activities" subsumed under the "reasonable pursuit" defence.

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He expressed concern that the proposed threshold for the offence of stalking was set too high as there must be proof that the victim had felt "alarmed" or "distressed" by a course of conduct. USCMA said that the Administration considered that the evidential threshold should not be set too low for a newly created criminal offence. The public might not agree to penalize an annoying act which did not cause another person alarm or distress. She assured members that the evidential threshold ought to be met in order to instigate any prosecution.

49. Mr Paul TSE enquired about the timetable for taking forward the legislative proposals. Ms Emily LAU urged the Administration to solicit views from the media on the proposed legislation to allay their concerns and take forward its proposals as soon as possible. USCMA responded that the Administration would consolidate the views received and publish a report setting out the views received after the public consultation exercise. It was envisaged that the Administration would reach preliminary views on the way forward by mid-2013 for the next-term Government to follow up.

50. At the Chairman's suggestion, members agreed that the Panel should receive public views on the Consultation Paper at the regular meeting in February 2012.

V. Any other business

51. There being no other business, the meeting ended at 5:45 pm.

Council Business Division 2
Legislative Council Secretariat
10 May 2012