

立法會
Legislative Council

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by the Administration)

Panel on Constitutional Affairs

Minutes of special meeting
held on Friday, 17 February 2012, at 9:00 am
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-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, 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 CHEUNG Hok-ming, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Cyd HO Sau-lan
Dr Hon LAM Tai-fai, BBS, JP
Hon CHAN Kin-por, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon LEUNG Kwok-hung
Hon WONG Yuk-man

Public Officers attending : 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

Attendance by invitation : Democratic Party

Mr Andrew WAN

Yat Tung Community Network Association

Mr KWOK Chung-man

Power for Democracy

Mr LAM Wing-yin
Executive Committee Member

Mr LEUNG Chun-yin

Young Democratic Alliance for the Betterment and Progress of Hong Kong

Mr Holden CHOW
Chairman

Civic Party

Miss Shirry HEUNG
Executive Committee Member of Constitution and Governance
Branch

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

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

Miss Cindy HO
Senior Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

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I. Consultation Paper on Improvement Measures of the Voter Registration System

[LC Paper Nos. CB(2)605/11-12(03), CB(2)1103/11-12(01), CB(2)1077/11-12(01) to (03), and CB(2)1171/11-12(01) to (04)]

Presentation of views by deputations/individuals

At the invitation of the Chairman, six deputations and individuals presented their views on the Consultation Paper on Improvement Measures of the Voter Registration ("VR") System and related issues, a summary of which is at **Appendix**. Members also noted the written submissions from Mr LI Ka-leung, member of Sai Kung District Council, Mr YEUNG Wai-sing, member of Eastern District Council, Society for Community Organization and Hong Kong Human Rights Monitor which were tabled at the meeting [subsequently issued vide LC Paper Nos. CB(2)1077/11-12(02) to (03) and CB(2)1171/11-12(03) to (04) respectively].

Discussion

2. Dr Margaret NG invited views from deputations on (a) whether the Registration and Electoral Office ("REO") should be required by law to keep electors' particulars in the voter registers accurate and up-to-date as proposed in paragraph 8 of the submission of the Hong Kong Human Rights

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Monitor [LC Paper No. CB(2)1171/11-12(04)]; (b) whether sanction should be imposed on electors who failed to report change of addresses; and (c) whether Hong Kong permanent residents who retired while living outside Hong Kong could still exercise their right to vote.

3. Mr KWOK Chung-man of Yat Tung Community Network Association considered that REO should have more power under the law to verify electors' particulars. Mr KWOK suggested that penalty should only be imposed when an elector had failed to report change of address and voted in a subsequent election. Mr Andrew WAN of Democratic Party and Mr LEUNG Chun-yin, however, said that they inclined to support an arrangement which should be flexible enough to cater for the cases of non-reporting change of address due to negligence. Mr LEUNG Chun-yin further suggested that automatic registration should be worthy of exploration as the present VR regime was out of date and unable to cope with the present circumstances. Mr LAM Wing-yin of Power for Democracy supported the proposal for setting out of electors by reference to residential address which he considered would have little implication on data privacy as the register would still contain the same amount of information albeit in a different format.

Requirement to provide address proof

4. Mrs Regina IP objected to the requirement of providing address proof for new applications because candidates of small political parties would not have the resources to deal with registration of new electors if address proof should be sought from all new VR applicants. She also appreciated the fact that some applicants would find it difficult to produce address proof who were not owner of the property, such as young people who were living with their parents. To tackle the problem of vote-planting¹ more effectively, Mrs IP suggested that REO should enhance its checking of VR records and its staff should be more vigilant in detecting irregularities. She also suggested that raising the penalty level for such electoral offences should achieve sufficient deterrent effect.

5. Responding to Dr Priscilla LEUNG, Secretary for Constitutional and Mainland Affairs ("SCMA") referred to different practices on the acceptance of different documents as address proof by some common law jurisdictions such as Australia, UK and Canada. Mr Paul TSE considered that the types

¹ "Vote-planting" refers to voter registration on the basis of deliberately submitting a false residential address to the REO.

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of documents to be accepted as address proof should have particular regard to the local circumstances. In his view, the smart identity card would be an ideal proof of permanent residency and the Administration should actively explore and optimize its usage for cross-matching of electors' information. He also suggested that the Administration should consider automatic registration so as to dispense with the VR procedure in the long run.

6. In response to the concern about suspicious addresses indicated in VR applications such as schools, go-down and postal address, Chief Electoral Officer ("CEO") said that in respect of an address which was obviously not a residential one, further information would be sought from the applicant before registration was accepted.

Enhanced checking

7. Dr Priscilla LEUNG enquired why a checking rate of 10% for REO to perform its random checking was suggested by Mr Andrew WAN of Democratic Party. Mr Andrew WAN of Democratic Party said that the proposed rate was considered sufficient to achieve a deterrent effect against vote-planting while balancing the additional workload hence arising. Before arriving at that figure, they had conducted an opinion survey during which most people had indicated that a checking rate of 15% or above would be unacceptable.

8. Dr Priscilla LEUNG considered that a random checking rate of three to five per cent of all electors as proposed by the Administration was grossly inadequate. She suggested that the Administration should optimize the use of information technology in the verification process and cases of irregularities identified should be closely examined. She suggested that for negligent cases, the Administration should take steps to clearly remind the elector concerned and should not take penal action outright.

Proposed introduction of penalty

9. Dr Margaret NG considered that suspected vote-planting cases should call for more stringent enforcement actions and should be treated separately from those who had merely neglected to update their residential address. Mrs Regina IP cautioned that the introduction of penalty for failing to report change of residential address in VR records would create panic among the public with implications on other legislation which similarly required reporting change of address, such as the Registration of Persons Regulations (Cap. 177A) and Road Traffic Ordinance (Cap. 374). Mr Paul TSE said

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that according to section 19 of the Registration of Persons Regulations, a person who failed to update his personal particulars including residential address as required under section 18 would be subject to a penalty. Dr Margaret NG enquired about whether any enforcement action had been taken against non-compliance cases in respect of Cap. 177A. She considered that if no enforcement action had been taken, it would be unfair to impose any penalty as proposed. SCMA undertook to provide the information after the meeting.

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Proposed amendment to the register format

10. Dr Margaret NG enquired how electors' information would be set out in the provisional register for public inspection if the proposal for setting out the electors in accordance with their principal residential addresses in the voters register was supported. CEO explained that electors would be set out according to the registered addresses and electors residing at the same address would be put together. Dr NG was concerned that such electors' information available for public inspection might be used for other purposes such as commercial use. CEO replied that the provisional register was for public inspection only and, except for purposes related to elections, no copying would be allowed.

11. Dr Priscilla LEUNG and Dr Margaret NG cautioned that there might be privacy issues if names of electors of the same household were divulged. Dr NG stressed that access to such records should be on a need-to-know basis and restricted to REO for the performance of its verification duties. She was concerned that some electors would simply apply for de-registration for the protection of their privacy.

12. Mr LEUNG Chun-yin suggested that the year of registration of individual electors should also be included in the register to serve as an additional reference. SCMA advised that the request would have resources implication and its needs and relevance would have to be assessed to justify the additional work involved. CEO added that the suggestion would also entail legislative amendment.

Proposed transfer of offence

13. Mr LEE Wing-tat considered that the present arrangement for enforcement of the election-related offences by two separate law enforcement agencies was undesirable and considered that the existing offences under the Electoral Affairs Commission (Registration of Electors)

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(Legislative Council ("LegCo") Geographical Constituencies ("GCs")) (District Council Constituencies) Regulation ("EAC Regulation") (Cap. 541A) on false declaration should be transferred to the Independent Commission Against Corruption for enforcement under the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") (Cap. 554) in order to expedite the investigatory process. SCMA replied that the proposal would have the effect of raising the penalty of the offences under the EAC Regulation because offences under ECICO were subject to higher penalties, and hence its implication would have to be considered fully.

Meaning and interpretation of "ordinarily resident in Hong Kong"

14. Referring to the view of some deputations that the measures to be introduced would unnecessarily restrict the right to vote as guaranteed under the Basic Law ("BL"), Dr Margaret NG said that the right under BL 26 had to be exercised in accordance with the law. Hence, the eligibility criteria for VR under the electoral law would not deprive the electors' right to vote unless they became excessive.

15. Noting that the issue relating to the meaning of "ordinarily resident in Hong Kong" was not included in the Consultation Paper, Dr Priscilla LEUNG and Mr LEE Wing-tat urged that the Administration should clarify as a matter of principle the eligibility of electors who had retired outside Hong Kong or still retained a close connection but did not have a residential address in Hong Kong. Dr Priscilla LEUNG suggested that the Administration might gain useful insights from the recent presidential election in Taiwan where its citizens residing overseas were still entitled to vote. Mr LEE Wing-tat said that as estimated by the Administration in a separate exercise, the number of retirees living on the Mainland could run up to a hundred thousand; and Mr LEE would incline to support preserving their right to vote as guaranteed under BL. Dr Margaret NG said that permanent residents who were living outside Hong Kong apparently would not be able to fulfil the requirement of "ordinarily resident in Hong Kong". Dr NG requested the Administration to explore whether these people were still entitled to vote and if so, how they could exercise their voting right legally. Dr Priscilla LEUNG considered that the Administration should explore how to cater for the situation of permanent residents residing outside Hong Kong, citing the use of "last dwelling place" for preserving the voting rights of prisoners as an example.

16. Dr Margaret NG did not consider the application of the concept of "last dwelling place" appropriate, pointing out that the location of the last

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dwelling place bore no relation to an elector's place of residence (and hence the geographic constituency in which he was entitled to vote). Dr NG requested that the Administration should also explore if postal voting was viable in case permanent residents living outside Hong Kong were also entitled to vote.

17. Dr Margaret NG further pointed out that some people might still use their parents' address as their principal residential address for the purpose of VR. She was of the view that a person who had more than one place of residence should have the freedom to choose which one was his principal residential address for VR. Mr Paul TSE expressed a similar view, stressing that a lenient approach should be adopted.

18. SCMA said that the Administration shared the views expressed by members that the voting right as guaranteed under the BL should not be taken away easily and flexibility should be allowed for electors to determine their principal residential address if they had more than one place of residence. The Administration would carefully consider the diverse views on the issue before deciding on the way forward. SCMA explained that under section 2(6) of Immigration Ordinance (Cap.115), a person did not cease to be ordinarily resident in Hong Kong if he was temporarily absent from Hong Kong and whether that person should cease to be so ordinarily resident would depend on the circumstances of that person and his absence. According to the "Guidelines on Election-related Activities in respect of the District Council Election", relevant factors would include the length of the person's absence, the reason for his absence, and his continuing connections with Hong Kong etc. Each case would have to be considered on its own merits and the Administration would examine the issue in detail.

De-registration procedures

19. Mr Paul TSE expressed concern that some people who had acquired their Hong Kong permanent residency under section 2(d) to (f) of Schedule 1 to the Immigration Ordinance (Cap.115) might not be aware of their loss of permanent residency after they had been absent from Hong Kong and hence would no longer be eligible to vote. He considered that de-registration procedures should be put in place.

20. CEO explained that the electors should apply in writing to REO and a notification would be issued by REO within two weeks upon receipt of the application.

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Removal from the final register

21. Dr Priscilla LEUNG pointed out that the name of an elector had been wrongfully deleted from the voter register of the Election Committee ("EC") sub-sector after he had moved to another property. SCMA said that a rigorous process would have been gone through before an elector's name was put on the omissions list in accordance with the electoral law. CEO explained the relevant procedures as set out in the EAC Regulation, i.e. the making of inquiries in writing by registered post to ascertain whether an existing elector was still eligible to be registered before his name was removed from the register. In respect of the undelivered poll cards returned to REO, if circumstances permitted, REO would attempt to contact the electors before resorting to the formal inquiry process. The inquiry letter would be sent to the person by registered post and if the person still failed to update his principal address within a statutory timeframe, his name would be put on the omissions list. The omissions list would be published for public inspection together with the provisional register.

Cross-matching of addresses of electors

22. Ms Emily LAU was of the view that REO should cross-match the electors' addresses with more government departments and the Administration should consider allowing online inspection of the provisional register by individual electors. CEO advised that pending the advice from the Privacy Commissioner on Personal Data, cross-matching of some 1.4 million electors records would be made with the Housing Department and Housing Society. Meanwhile, REO was in liaison with other government departments including Transport Department, Immigration Department, Water Supplies Department and Inland Revenue Department to explore if cross-matching of data was permissible under existing legislation as an effective means to update the registers. However, the suggestion of providing online inspection would require resources to create a database with a high level of security and it might also give rise to the authenticity issue. Ms LAU suggested that the Panel be updated on the progress of enhanced cross-matching with other government departments on the residential addresses of electors.

23. In response to the suggestion of Miss Shirry HEUNG on the transfer and use of data collected by the Census and Statistics Department during household visits for the purpose of VR, CEO said that he had considered the

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issue with the department and understood that the data collected could only be used for the original purpose as stated at the time of collection.

24. Referring to the views of Mr LEUNG Chun-yin who queried about the effectiveness of sending letters to 3.5 million registered electors and suggested that REO should conduct door-to-door inspections in respect of doubtful cases, SCMA said that it was envisaged that the letters addressed to all registered electors would be an effective means to identify cases of irregularities in the first place, and the Administration would keep in view its effectiveness before considering any further measure.

Proposed amendment to the statutory deadlines

25. Referring to the remark of Dr Pricilla LEUNG that the statutory deadline for VR on 1 April 2012 as proposed in the Consultation Paper was impracticable since the publicity measures to promulgate the relevant changes to VR system had not yet commenced, Deputy Secretary for Constitutional and Mainland Affairs ("DSCMA") assured the meeting that the Administration would ensure sufficient time for registration and a change of the statutory deadline would entail legislative amendment.

Way forward

26. SCMA briefed the Panel on various administrative measures to improve the VR system which were launched since January 2012, including enhanced checking by REO as well as random checking for around three to five per cent of all existing electors; enhanced publicity by addressing the 3.56 million electors to appeal to them to update their residential address and to report back any anomalies; enhanced cross-matching with various government departments; and additional checks on lists of demolished buildings and buildings to be demolished.

27. SCMA said that the Administration would consolidate the views received on the Consultation Paper and report to the Panel on the preliminary findings and further measures that the Administration would take at the next Panel meeting.

Adm

(Post-meeting note: The Administration reported the consultation results at the Panel meeting on 19 March 2012. An information paper from the Administration on "Public Consultation on Improvement Measures of Voter Registration System: Summary of

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Views and Administration's Initial Position" was tabled at the meeting on 19 March 2012 and circulated to members vide LC Paper No. CB(2)1453/11-12(01) on 20 March 2012.)

II. Any other business

28. There being no other business, the meeting ended at 11:15 am.

Council Business Division 2
Legislative Council Secretariat
31 August 2012

Panel on Constitutional Affairs

Consultation Paper on Improvement Measures of the Voter Registration System

Summary of the views and suggestions of the deputations/individuals attending the special meeting on 17 February 2012

No.	Deputation/individual [LC Paper No. of submission]	Views and suggestions
1.	Mr Andrew WAN Democratic Party [LC Paper No. CB(2)1171/11-12(01)]	<p>(a) The proposed address proof requirement is not supported as it may discourage the public from registration as electors;</p> <p>(b) A 10% checking rate is proposed for the Registration and Electoral Office ("REO") to identify irregularities on voter register;</p> <p>(c) The proposed penalty should only apply to registered electors who fail to report change of address and vote in the subsequent geographical constituency election;</p> <p>(d) Advancing the statutory deadline to allow more time for public inspection is supported;</p> <p>(e) Putting the election-related offences under the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") under the purview of the Independent Commission Against Corruption ("ICAC") is supported; and</p> <p>(f) The requirement to present poll cards before voting should not be re-introduced.</p>
2.	Mr KWOK Chung-man Yat Tung Community Network Association [LC Paper No. CB(2)1103/11-12(01)]	<p>(a) The proposed address proof requirement for new voter registration ("VR") and subsequent updating is supported;</p> <p>(b) Concern is raised over the voting right of permanent residents living outside Hong Kong, such as Shenzhen and Macau, and whether these persons are entitled to vote in the District Council (second) Functional Constituency; and</p> <p>(c) Enquiry about the duration for processing of application for deregistration by the REO.</p>

3.	Mr LAM Wing-yin Power for Democracy [LC Paper No. CB(2)1171/11-12(02)]	<ul style="list-style-type: none"> (a) The proposed measures of the Administration are not targeted to address the vote-planting issue and the address proof requirement might discourage the public from registration as electors; (b) REO should critically review the existing records in voter register to identify irregularities, including, the number of electors registered with the same address exceeding a certain number; non-residential address such as schools or godown; addresses which are false or non-existent; and that REO should enhance its random checking; (c) Cases of falsifying address should be dealt with by enforcement action with increased penalty; (d) Enhanced cross-matching with other government departments on the residential addresses of electors is proposed; (e) Extension of the statutory deadline for public inspection of the voter registers is supported; (f) The proposal for setting out the electors in accordance with principal residential addresses in the voter register is supported; (g) Putting the election-related offences under the Elections ECICO under the purview of ICAC is supported; (h) Introduction of a penalty for non-updating of residential address is not supported; and (i) The requirement to present poll cards before voting should not be re-introduced.
4.	Mr LEUNG Chun-yin [LC Paper No. CB(2)1077/11-12(01)]	<ul style="list-style-type: none"> (a) The proposed address proof requirement is not supported; (b) The general public who are users of government service should be encouraged to authorise cross-matching of their residential address records in VR with other government departments; (c) The vote-planting problem should be dealt with by improving the verification work of REO through cross-matching of electors' addresses information with other government departments and the conduct of territory-wide household visits; (d) The proposal for setting out electors' particulars in accordance with principal residential addresses is supported; and (e) Inclusion of the year of registration of individual electors in voter register as an additional reference is suggested.

5.	Mr Holden CHOW Young Democratic Alliance for Betterment of Hong Kong	<ul style="list-style-type: none"> (a) The Administration should focus on suspected vote-planting cases instead of targeting the whole of 3.5 million registered electors; (b) The proposed address proof requirement will discourage the public from registration; and (c) Concerns are expressed over the eligibility of elderly citizens living outside Hong Kong but still have a close connection with Hong Kong and the definition of "ordinarily resident in Hong Kong".
6.	Miss Shirry HEUNG Civic Party	<ul style="list-style-type: none"> (a) The fairness of election should be upheld through administrative measures and enhanced enforcement efforts to restore public confidence in the electoral system; (b) The Administration should make reference to the experience in the United Kingdom whereby a new database was set up for capturing VR records of electors and for cross-matching purpose; (c) The Administration should explore utilising the particulars collected from population census to help verify the records of electors in VR so as to bring the voter register up-to-date; (d) The proposal for setting out the electors in accordance with principal residential addresses in the voter register is supported; and (e) The Administration should explore the use of voter register for other purposes to facilitate studies by professional bodies and Non-government Organisations with a view to improving the VR system.