

立法會
Legislative Council

LC Paper No. CB(2)330/99-00

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seen by the Administration)

Ref : CB2/BC/16/98

**Legislative Council Bills Committee on
Legislative Council (Amendment) Bill 1999**

**Minutes of 21st meeting
held on Thursday, 17 June 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon NG Leung-sing
Hon Margaret NG
Hon MA Fung-kwok
Hon CHEUNG Man-kwong
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon LEUNG Yiu-chung
Hon Gary CHENG Kai-nam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Howard YOUNG, JP
Hon YEUNG Sum
Hon YEUNG Yiu-chung
Hon LAU Kong-wah
Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk
Hon TAM Yiu-chung, JP

Members:
Absent
Dr Hon Raymond HO Chung-tai, JP
Prof Hon NG Ching-fai
Hon LEE Kai-ming, JP
Hon Mrs Selina CHOW, JP
Hon CHAN Kam-lam
Hon Christine LOH
Dr Hon LEONG Che-hung, JP
Hon LAU Wong-fat, GBS, JP

Public Officers :
Attending
Mr Robin IP
Deputy Secretary for Constitutional Affairs

Miss Shirley YUNG
Principal Assistant Secretary for Constitutional Affairs (4)

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs (5)

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Ms Phyllis KO
Acting Deputy Principal Government Counsel (Elections)

Clerk in :
Attendance
Mrs Percy MA
Chief Assistant Secretary (2) 3

Staff in :
Attendance
Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2) 7

I. Administration's responses to points raised by the Bills Committee on 28 and 31 May 1999
(LC Paper Nos. CB(2) 2202/98-99(01) and 2304/98-99(03))

The meeting continued its discussion on LC Paper No. CB(2)2202/98-99(01).

Item 2 - Social Welfare Functional Constituency (FC)

2. Referring to Mr Eric LI's proposal to remove corporate members of the Hong Kong Council of Social Service and exempted societies and non-profit making companies from the Social Welfare FC, the Chairman referred members to the Administration's reply in Annex to LC Paper No. CB(2) 2304/98-99(03). Members noted that the Administration had consulted the exempted societies and non-profit making companies which had been registered electors in the Social Welfare FC on Mr LI's proposal. Those which had responded indicated objection. The Administration held the view that the present delineation should be maintained.

Item 3 - Election Committees (EC) provided for in Annexes I and II of the Basic Law

3. Members noted that the Administration had not changed its position on the matter .

Item 4 - By-election of the Chief Executive (CE)

4. Members noted the Administration's reply and the Legal Adviser's advice as set out in LC Paper No. LS 202/98-99.

Item 5 - Advance polling

5. The Chairman said that the Administration had decided to introduce amendments to delete the provisions concerning advance polling arrangements in the Bill (LC Paper No. CB(2) 2304/98-99(03). Ms Emily LAU questioned the reasons for the Administration's complete change of stance. She said that the public would be disappointed that advance polling could not be implemented in the 2000 LegCo election.

6. Deputy Secretary for Constitutional Affairs (DS for CA) said that in response to members' repeated appeals for advance polling, the Administration had introduced the proposal in the Bill. The objective was to allow individual electors who could not vote on the general polling day to vote in advance. Having taken into account the concerns expressed by members at a previous meeting about the possibility of the media announcing the results of the exit polls conducted on the advance polling day before polling on the general polling day closed, and the importance of a fair and impartial election, the Administration came to the view that advance polling should not be

introduced in the 2000 LegCo election before the problem was resolved. He also expressed concern about legislating against the release of exit poll results by the media before the close of all polls might run the risk of contravening Article 27 of the Basic Law which provided that Hong Kong residents should have the freedom of speech, of the press and of publication. He advised members that there was a relevant court case in Canada last year on that issue.

7. Ms Emily LAU responded that countries such as Australia and Japan had implemented advance polling successfully without violating international covenant in respect of human rights. She said that Hong Kong should learn from the practices of these countries. The Chairman said that unlike Hong Kong, these countries had a large territorial coverage and it might not be easy for the media to conduct exit polls on the advance polling day.

8. Dr YEUNG Sum said that judging from the response of the Administration at a previous meeting, it would appear that the problem of exit polls had caught it by surprise. The fact that the Administration had reversed its stance illustrated that it had not thoroughly considered the impact of advance polling before putting forward the proposal. He pointed out that while the release of exit poll results would have little impact on geographical constituencies (GC) where Members were returned by direct election, functional constituencies (FCs) which had a small electorate might be affected. The Administration might need to consider setting a different guideline for the advance polling of FCs. He said that since the Electoral Affairs Commission (EAC) had already required the media not to announce the results of the exit polls before the close of polls under the existing guidelines on electoral arrangements, the Administration should discuss with the media with a view to reaching an informal agreement to expand the EAC guidelines to cover advance polling. He said that the Democratic Party did not support legislating against the release of exit poll results by the media.

9. Mr LEE Wing-tat supported the views of Ms Emily LAU and Dr YEUNG Sum. He urged the Administration to face and resolve the problem rather than abandoning the proposal. He said that he was dubious about the impact of exit polls on elections, given that the result of exit polls could be advantageous or disadvantageous to a candidate, depending on which angle you were looking at. Referring to the court case in Canada, he asked the Administration whether the existing EAC guidelines which required the media not to announce the results of the exit polls before the close of polls was in contravention of the freedom of expression.

10. Mr CHENG Kai-nam disagreed with the views of Dr YEUNG Sum. He opined that it was inappropriate for the Administration to discuss with the media on exit poll arrangements as the Administration would be seen to be exerting influence on and interfering into the affairs of the media. He also expressed concern over the suggestion to adopt a different arrangement for the release of exit poll results of FC elections. He

said that while the polling results might not be accurate, the release of such information before the close of polling would definitely have an impact on election.

11. In response to members, DS for CA and Principal Assistant Secretary for Constitutional Affairs (4) (PAS for CA (4)) replied as follows-

- (a) The Administration had made reference to overseas experience and learnt that countries such as Canada, Australia and Japan provided advance polling arrangements. However, not all the countries holding general election had advance polling, e.g. France, USA and UK. While the conduct of exit polls and the announcement of their results before the close of polls were allowed in some countries, their practices might not be applicable to Hong Kong as the electoral arrangements were different. For instance, LegCo Members were returned by GC, FC and EC elections and the electorate size of the constituencies varied;
- (b) The suggestion to provide different guidelines for advance polling for FC and GC would create confusion, given that an elector might be eligible to vote in both the GC and FC elections;
- (c) Any informal agreement with the media would be impracticable. Taking into consideration that advance polling would be held 15 days in advance of general polling, the release of exit poll results during the interim period might undermine the fairness and impartiality of the elections. As regards the existing requirement for the media not to announce exit poll results before the polls closed, the time difference between the close of polls and the release of polling results, if any, was only a few hours, and its impact, if any, would be limited; and
- (d) Having regard to a court ruling in Canada, the Administration believed that legislating against the release of exit poll results by the media might run the risk of contravening Article 27 of the Basic Law. Since fairness and impartiality were of paramount importance in elections, the Administration concluded that it would not introduce advance polling in the 2000 LegCo election before the problem was resolved.

12. Dr YEUNG Sum and Mr LEE Wing-tat said that since the media was able to exercise self-discipline of not releasing exit poll results at the last LegCo election, the Administration should not assume that they would act otherwise for advance polling. They considered that the Administration should take a more proactive approach in dealing with the matter and that its argument for not implementing the proposal was unsound. PAS for CA(4) responded that the Administration was not making any assumption but was concerned about the fact that any informal agreement that could be reached with the media would not be able to address the concerns.

Item 6 - Mr Andrew WONG's proposed amendments

13. On his proposed amendment to group the 30 FC seats into five FCs each having six seats; and to allow GC electors to vote in the five FCs, Mr Andrew Wong said that he was disappointed at the Administration's reply that it would have a charging effect. The purpose of the amendment was to prevent small circle election. In addition, he said that he would introduce an amendment to apply the list system of proportional representation to the EC election.

II. Administration's responses to outstanding issues raised by the Bills Committee
(LC Paper No. CB(2) 2304/98-99(03))

Item 1 - "No canvassing day"

14. Referring to the Administration's reply that it was worried that prohibiting candidates from carrying out canvassing activities on the polling day might affect on the freedom of expression which was a fundamental right guaranteed in the International Covenant of Civil and Political Rights (ICCPR), Ms Emily LAU pointed out that some countries had imposed such a ban on the election day.

15. DS for CA replied that different countries had different practices. Some countries such as Japan, Taiwan and Singapore adopted the "no canvassing day" arrangement, while canvassing activities on the election day was allowed in USA. For a country to implement "no canvassing day", it must have full justification on why such a restriction was necessary.

16. In response to Ms Emily LAU on the proportionality rule, Deputy Solicitor General (DSG) explained that to be lawful, any restriction imposed on the protected freedom of expression must be necessary and proportionate to the harm which was purportedly addressed by the restriction. If the restriction was a measure to prevent disruption to polling or to prevent activities which would restrict electors' access to the polls, then it might not be regarded as infringing the freedom of expression. The experience in Hong Kong indicated that a territory-wide ban was not necessary to deal with the circumstances described. The limited restriction adopted under the existing practice had achieved the desired effect around the area of the polling station. If anyone was proposing to impose a new restriction on the freedom of expression by restricting canvassing on the election day, he would need to provide a justification that could meet the tests of necessity and proportionality rule.

17. Ms Emily LAU enquired whether the Administration had come across any precedent case where a country implementing such a ban was found to be violating the ICCPR. DSG responded that the underlying principles applicable to the court case in

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Canada relating to prohibition of announcement of exit poll results would apply equally to the banning of canvassing activities on the election day.

18. Mr Andrew WONG said that given that there was no precedent case, the Administration's argument was flimsy. He said that if the Administration's principle was to apply, then imposing limits on election expenses might also be regarded as infringing the right of expression. He pointed out that USA and UK had adopted different systems for regulation of election expenses. USA imposed a limit on donation to a candidate, but there was no limit on a candidate's election expenses; UK imposed a limit on election expenses. Noting that both countries practised common law and were signatories to the ICCPR, the Chairman wondered why they adopted diametrically different systems.

19. DSG responded that the arrangements illustrated that the circumstances in different countries were different and the laws that applied in different countries applied to the circumstances which prevailed. To impose a limit on election expenses was a restriction on the ability of candidates to express themselves in relation to political messages. It certainly was a restriction on the freedom of expression. In UK, the justification for the restriction on election expenses was to ensure a level playing field in the electoral arena. To his understanding, a limit was imposed on campaign donations, but not on election expenses in USA. This applied at the federal level, but different rules might apply at the state level.

20. Mr Andrew WONG said that he supported the UK system. He asked about the circumstances under which the Administration would consider implementing "no canvassing day" on the election day.

21. DS for CA replied that the Administration's position was that candidates should be allowed to choose, according to their own needs, when and how to carry out canvassing activities, provided that such activities would not undermine the fairness of the election or cause undue disturbance to electors. Experience of past elections showed that canvassing activities on polling day were generally carried out in an orderly manner. The Administration did not agree to legislate against canvassing activities on the ground that some candidates did not wish to carry out such activities on the polling day.

22. In response to members, Assistant Legal Adviser said that unless there was a pressing social need to impose a restriction, the freedom of expression should be safeguarded under all circumstances. It was necessary for one to provide a justification in order to legislate against canvassing on the polling day.

23. Dr YEUNG Sum asked the Administration whether overseas countries which imposed such a ban were aware that they might infringe the freedom of expression guaranteed under the ICCPR, and whether any complaints had been lodged against the

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Adm government for imposing the ban. DS for CA agreed to gather the information as far as possible, given the limited time available.

24. Mr Andrew WONG said that in the absence of any court ruling that implementation of "no canvassing day" was in breach of the ICCPR, the Administration should not use it as a pretext for not implementing the proposal. Otherwise, the same principle could be extended to cover other activities such as the prohibition of the use of loudspeakers within the no canvassing zone and the prohibition of electioneering activities in private premises by landlords and tenants. He opined that one should look at the issue in the context of the totality of the resources available to candidates.

25. DS for CA responded that there were justifications for designating an area outside polling stations on polling day as no canvassing zone. The purpose was to maintain free and safe passage for electors, and to ensure that electors were not unduly harassed on their way to a polling station. The restriction was therefore fully justified. Within a no canvassing zone, door-to-door canvassing in residential blocks was permitted so long as it did not pose any obstruction to electors.

26. Mr LEUNG Yiu-chung queried the rationale for the enlargement of the no canvassing zone in recent years and whether such action would violate the freedom of expression guaranteed under the ICCPR. DS for CA said that the Returning Officer (RO) of each polling station was responsible for determining the area outside the polling station to be a no canvassing zone with a view to ensuring that the arrangements would not undermine the fairness of the election or cause disturbance to the electors.

27. DS for CA added that in response to the views expressed by two members of the Bills Committee on District Councils (DC) Bill, the EAC was considering whether it would be justified to adjust the area of the no canvassing zone of particular polling stations in the 1999 DC election. A few members were surprised at the new development which was a retrograde step. They pointed out that the Bills Committee had yet to have any consensus view on the matter. The Chairman supplemented that the Administration's agreement to enlarge the no canvassing zone was to respond to Members' repeated requests for the implementation of "no canvassing day". Members urged the Administration to keep Members informed if there was any change in policy.

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28. In response to members on electioneering in private premises, PAS for CA(4) said that the EAC would appeal to owners of private premises to provide equal opportunity to all candidates competing in the same constituency. It was advisable for owners and tenants of private premises to reach a decision as to whether electioneering activities in the building should be allowed or not. The decision so reached should be respected by candidates. As regards the common areas of public housing estates, PAS

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for CA (4) said that electioneering activities that were conducted in a lawful manner would not be prohibited.

Items 2 and 3 - Advance polling

29. Members noted that the subject had been discussed under agenda item I.

Items 4 - Termination of GC proceedings

30. Members noted that the Administration had agreed that the names of surplus nominees should not be added to the relevant list of candidates of GC elections after a candidate's name had been deleted due to disqualification or death after the close of nomination.

Item 5 - Termination of FC proceedings

31. Members noted that the Administration had agreed that for FC elections, a by-election would be held if a candidate was disqualified after the close of nomination and before the polling day.

Item 6 - Clause 45(1)

32. Members noted the reply.

Item 7 - LegCo seats for Urban Council and Regional Council FCs

33. Members noted the reply.

Item 8 - Religious subsector of the EC

34. Mr CHEUNG Man-kwong asked about the method for the selection of the EC members of the religious subsector which comprised six designated religious bodies.

35. DS for CA said that given the unique characteristics of the religious subsector, the method adopted to select the 40 members to serve on the EC was different from that of the other subsectors of the EC in the 1998 LegCo election. The 40 members of the religious subsector were returned to the EC by way of nomination. Each designated body might nominate a number of persons selected by it as members representing the religious subsector. Each designated body could use a method that it considered appropriate to select its nominees. Given that the 40 seats could not be divided evenly among the six bodies, under the Legislative Council Ordinance (LCO) the CE in Council may by order distribute the 40 seats among the six bodies taking into account the latter's view. The Chairman said that according to his understanding, the arrangements adopted had taken into consideration the wish of the religious bodies not

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to get involved in politics.

36. In response to Mr CHEUNG Man-kwong, PAS for CA(4) said that as some religious bodies did not have a complete list of the faithful, it was not possible for a voter register to be compiled for the purpose of an election of the religious subsector. Mr CHEUNG Man-kwong expressed concern that the Administration had no role to play in the nomination process. He also queried that in the absence of a register of the faithful, how could the religious bodies concerned determine whether a certain person was qualified to be nominated as an EC member. DS for CA said that the Administration trusted that the religious bodies would adopt proper arrangements for the nomination. Miss Margaret NG said that the nomination arrangements would only protect the interests of the religious bodies but not that of the faithful. Under the existing arrangement, the nomination method to be used by a designated body would still be subject to politicization.

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37. DS for CA said that the composition and nomination arrangements for the religious subsector had worked well in the 1998 LegCo election. In response to members, the Administration undertook to provide information on the respective methods for the selection of the EC members of the six designated religious bodies.

38. Ms Emily LAU asked whether the CSAs to be moved by the Administration to further improve the nomination arrangements were tailor-made for the Catholic Diocese of Hong Kong (CDHK) which had decided not to assign preference to its nominees in the 2000 LegCo election.

39. DS for CA replied in the negative. He explained that section 3(3) of Schedule 2 to the LCO provided that if a designated body nominated a number of persons which was greater than the number of seats assigned to it, it had to assign preference to the nominees. However, the provision was silent on how to deal with the situation where a designated body failed to assign preference to its nominees. The Administration therefore proposed to move CSAs to provide that if a designated body nominated more persons than the assigned number but failed to assign preference to its nominees, the RO should determine, by drawing lots, who among the nominees should become members of the EC. The CSAs would apply to all designated bodies. The six designated bodies had been consulted and had no objection to the proposed amendments.

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40. Ms Emily LAU enquired about the reasons behind the CDHK's decision of not assigning preference to its nominees. She asked the Administration to provide a copy of the CDHK's letter to the Administration for members' reference. Should the Administration consider that it was inappropriate to make available the letter, the Clerk would approach the CDHK for more information. DS for CA said that the Administration would consult the CDHK about the request and revert to members.

Item 9 - Ex-officio membership of EC

41. Members noted that the Administration would move CSAs to establish a mechanism to update the ex-officio membership of the EC.

Item 10 - Listing of FC electorates

42. Members noted that the Administration would reorganize the items in the lists of FC electorates according to alphabetical order.

Item 11 - Proposed amendments by Members

43. Members noted the reply in Annex to the paper. The Chairman said that Mrs Miriam LAU had informed him that she might move CSAs to expand the electorates of the Transport FCs.

(Post meeting note - The Administration's response to concerns raised by the Bills Committee at this meeting was circulated to members vide LC Paper No. CB(2) 2389/98-99(01).)

III. Date of next meeting

44. The Chairman said that the next meeting would be held at 10:45 am on 22 June 1999. The purpose of the meeting was to discuss any amendments not relating to FCs to be proposed by Members. He reminded members to let the Secretariat have their proposed amendments by 19 June 1999 so that they could be issued to members before the next meeting. He also requested the Administration to provide for the Bills Committee's consideration the bilingual texts of the CSAs to be moved to the Bill.

45. The meeting ended at 4:20 pm.

Legislative Council Secretariat

8 November 1999