

立法會
Legislative Council

Ref : CB2/BC/3/08

LC Paper No. CB(2)2039/08-09
(These minutes have been seen
by the Administration)

Bills Committee on Voting by Imprisoned Persons Bill

**Minutes of the second meeting
held on Monday, 1 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon WONG Yung-kan, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon PAN Pey-chyou
Hon Paul TSE Wai-chun
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Dr Hon Margaret NG
Hon CHEUNG Hok-ming, SBS, JP
- Public Officers attending** : Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs
- Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs
- Mr Ivanhoe CHANG Chi-ho
Principal Assistant Secretary (Constitutional and Mainland
Affairs)
- Mr Gilbert MO Sik-keung
Deputy Law Draftsman (Bilingual Drafting and Administration)
- Miss Mandy NG Wing-man
Government Counsel

Mrs Vivian TING TSUI Wai-ming
Chief Electoral Officer

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

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Meeting with the Administration

[LC Paper Nos. CB(2)1622/08-09(03), CB(2)1696/08-09(01) and CB(3)548/08-09]

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

2. The Administration was requested to consider the suggestion of allowing imprisoned persons sentenced for life or prolonged imprisonment to use prison address as their residential address for the purpose of voter registration. The Administration was also requested to -

- (a) provide information on overseas practices on registration of imprisoned persons' residential addresses for the purpose of voter registration;
- (b) explain the legal basis for precluding an imprisoned person from using his prison cell as the registered address for voter registration;
- (c) advise from the legal point of view whether the address of a prison could be used for such purpose;
- (d) provide justifications for the policy decision to preclude an imprisoned person from doing so if it was permissible legally;
- (e) explain whether treating invalid addresses (which no longer existed) as residential addresses of electors was consistent with the electoral laws;
- (f) to provide information on the case law regarding the mentally-ill person using the hospital address as his residential address ;

Action

- (g) explain the voting arrangements for imprisoned persons residing in half-way houses; and
- (h) explain the relevant arrangements in paragraph 5 of LC Paper No. CB(2)1533/08-09(01) applicable to imprisoned persons sentenced for life or prolonged imprisonment who had already registered as electors.

3. ALA9 was requested to advise from the legal point of view whether the address of a prison could be used for voter registration, and to provide an analysis of the case referred to in paragraph 2(f) above as appropriate.

(Post-meeting note: The Administration's response and ALA's legal advice were issued to members vide LC Paper Nos. CB(2)1762/08-09 on 5 June 2009 and LS 82/08-09 on 9 June 2009 respectively.)

4. The Bills Committee completed clause-by-clause examination of the Bill (including the addition of a commencement clause) with the exception of clause 5, examination of which would be deferred to the next meeting pending the Administration's response to the relevant issues raised by members. On clause 4, the Administration was requested to review the Chinese wording of the proposed amended section 24(3)(b) of the Legislative Council Ordinance which had an implied meaning that the prison could be the home.

5. Members noted that the Bills Committee would be receiving views at its next meeting on 8 June 2009. The Administration said that if the Bills Committee could conclude deliberations of the Bill at the next meeting, it would give notice to resume Second Reading debate on the Bill on 24 June 2009 and table a set of subsidiary legislation on the same day. Another set of the subsidiary legislation would be tabled at the Council meeting on 8 July 2009 following the enactment of the Bill. The Administration hoped that the provisions in the Bill and the subsidiary legislation would commence at the same time in order to put in place the relevant electoral arrangements after the temporary 10-month suspension order granted by the Court expired.

6. The Clerk advised the Bills Committee that if the Bill would resume its Second Reading debate at the Council meeting on 24 June 2009, a report had to be made to the House Committee at its meeting on 12 June 2009.

7. The Clerk was requested to relay to the Hong Kong Bar Association which would be sending representatives to attend the next meeting the primary issue of concern of the Bills Committee as to whether, from the legal point of view, a prison address could be used by an imprisoned person as his residential address for the purpose of voter registration.

Action

8. The meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
26 June 2009

**Proceedings of the second meeting of the
Bills Committee on Voting by Imprisoned Persons Bill
on Monday, 1 June 2009, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000054 - 000143	Chairman	Opening remarks	
000144 - 000319	Administration	Briefing by the Administration on "Practical arrangements for voting by prisoners" (LC Paper No. CB(2)1696/08-09(01))	
000320 - 000441	Chairman Ms Emily LAU	Meeting with deputations at the next meeting on 8 June 2009	
000442 - 001106	Ms Audrey EU Administration	Explanation by the Administration on the practical voting and security arrangements for imprisoned and remanded unconvicted persons in a by-election	
001107 - 002253	Mr James TO Administration Chairman ALA9	<p>Discussion on Paragraph 5(c) of LC Paper No. CB(2)1533/08-09(01) (relating to clause 5 of the Bill).</p> <p>Concerns raised by Mr James TO about the proposed arrangement of allowing imprisoned persons who did not maintain a home in Hong Kong and who could not provide any proof on their last dwelling place in Hong Kong to apply to be registered to the residential address last recorded by the Immigration Department under the Registration of Persons Regulation as a last resort -</p> <p>(a) the proposed arrangement was arbitrary as that residential address might no longer exist, e.g. the building had been demolished, and using an invalid address as the registered address of an elector might be subject to legal challenge; and</p> <p>(b) for an imprisoned person sentenced for life or prolonged imprisonment, the prison would be the place with which he was more closely connected.</p> <p>Mr TO's suggestion of giving special consideration to allowing an imprisoned person sentenced for life or prolonged imprisonment to use the prison address as his residential address for the purpose of voter registration.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Response of the Administration that -</p> <p>(a) it was a policy decision of the Administration to preclude an imprisoned person from using the prison cell as his residential address for the purpose of voter registration, as it might lead to an unduly high proportion of imprisoned persons in the registered electorate of certain constituencies; and</p> <p>(b) in the judicial review case under which the Electoral Affairs Commission (EAC) was challenged for having wrongfully refused an imprisoned person (Mr CHOI) application to change his address to his prison cell for the purposes of voter registration, the Court ruled that "the EAC was quite entitled to come to the conclusion that Mr CHOI's prison cell in Stanley was not his dwelling place in Hong Kong at which he resided and which constituted his sole or main home at the time of application for change of address" (paragraph 194 of the judgment).</p> <p>Information provided by ALA9 -</p> <p>(a) Mr CHOI was convicted of one count of robbery and was sentenced to imprisonment for 54 months; and</p> <p>(b) it was stated in the judgment that the relevant ruling was made on the facts of Mr CHOI's case.</p>	
002254 - 003417	Mr LEUNG Yiu-chung Administration Chairman	<p>Issues raised by Mr LEUNG Yiu-chung -</p> <p>(a) the voting arrangements for persons who had just been released from prison; and</p> <p>(b) an imprisoned person who did not maintain a home in Hong Kong and who could not provide any proof on his last dwelling place in Hong Kong should be given the choice of residential address for the purpose of voter registration including his prison cell which was a place where he ordinarily resided.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Response of the Administration that -</p> <ul style="list-style-type: none"> (a) the Registration and Electoral Office (REO) would liaise closely with the Correctional Services Department (CSD) to keep track of the list of registered electors of the constituency concerned who would be serving imprisonment terms on the polling day and those who would be released, and inform them of the relevant polling arrangements; (b) a person who was a registered elector and who had just been released from a prison could vote at the polling station allocated for the residents of the constituency within which his residential address as entered in the final register was located; (c) a prison cell could not be regarded as the residence of a person because it was a place where a person was involuntarily kept and was not a dwelling place at which the person resided and which constituted the person's sole or main home as provided in the Legislative Council Ordinance; and (d) paragraph 5(c) sought to strike a balance by allowing, as a last resort, imprisoned persons who did not maintain a home in Hong Kong and could not provide any proof on their last dwelling place to register at a deemed residential address at which the persons had resided before as recorded under the Registration of Persons Regulation, while avoiding the risk of vote planting in order to ensure the integrity of an election. 	
003418 - 004031	Mr WONG Yung-kan Chairman Administration	<p>Views of Mr WONG Yung-kan that -</p> <ul style="list-style-type: none"> (a) in order to ensure fairness in an election, the prison cell could not be taken as the residential address for an imprisoned person for the purpose of voter registration; and (b) to ensure fairness in an election, no canvassing activities should be allowed during an election period by visitors who were participating in an election during visits made in their official capacities to imprisoned and remanded unconvicted persons 	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Response of the Administration that -</p> <ul style="list-style-type: none"> (a) canvassing activities in penal institutions would be regulated by subsidiary legislation to be introduced into the Legislative Council (LegCo); (b) CSD would inform the Police of any breach of the electoral laws; and (c) the issue would be considered in the context of making the relevant subsidiary legislation. 	
004032 - 004530	Dr PAN Pey-chyou Administration	<p>Views of Dr PAN Pey-chyou that -</p> <ul style="list-style-type: none"> (a) he supported the views of Mr WONG Yung-kan about not allowing an imprisoned person to use his prison cell as his residential address for voter registration; (b) if an imprisoned person sentenced for prolonged imprisonment was allowed to do so, it would be difficult and arbitrary in determining <ul style="list-style-type: none"> (i) what would be considered as a prolonged imprisonment; (ii) which prison cell should be used as his residential address, given that an imprisoned person would be subject to transfer if needed; and (c) the environment of a prison which was an isolated and enclosed institution was very different from that of a residential place, and it was questionable how an imprisoned person's vote could impact on the provision of facilities in the prison, as compared with that in a community; and (d) while imprisoned persons' voting right should be respected, the possible impact on the interest of ordinary citizens within the same constituency should also be considered. 	
004531 - 005358	Ms Emily LAU Administration Chairman	Explanation by the Administration on the circumstances under which an elector and a prisoner-elect would be put on the omissions list (paragraph 7 of LC Paper No. CB(2)1533/08-09(01))	

Time Marker	Speaker(s)	Subject(s)	Action required
005359 - 010203	Mr Paul TSE Administration Chairman	<p>Views of Mr Paul TSE that -</p> <ul style="list-style-type: none"> (a) the Court in Mr CHOI's case had not ruled out any possible use of a prison address as an imprisoned person's residential address for the purpose of voter registration as the ruling was based on the specific facts of that case; (b) the Administration's concern about vote planting was too remote as imprisoned persons with different political inclinations should also be representative of a society and vote planting was a criminal offence; and (c) given that an elector had the right to change his residential address, an imprisoned person should have the right to choose his residential address, e.g. prison, for the purpose of voter registration. <p>His enquiry about the overseas practices on registration of imprisoned persons' residential address for voter registration.</p> <p>Response of the Administration that -</p> <ul style="list-style-type: none"> (a) countries such as Australia, France and South Africa accepted the last dwelling place as the residential addresses of imprisoned persons and the Administration would provide information on overseas practices; (b) it was a policy decision that an imprisoned person should be precluded from using the prison address as his residential address for the purpose of voter registration. From the legal point of view, the definition of "residential address" of an elector should take account of a number of factors, among which was his wish to name a place as his residence and the duration he had resided in that place; (c) the Administration was not aware of any case law under which the prison address was used by a prisoner as his residential address for the purpose of voter registration; and (d) there was, however, a case law under which the address of a mental hospital had been used as the 	<p>Admin</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		residential address of a mentally-ill person who had been receiving long-term treatment in that hospital.	
010204 - 010625	Dr Priscilla LEUNG Administration Chairman	<p>Views of Dr Priscilla LEUNG that -</p> <p>(a) the proposed arrangement of allowing imprisoned persons who did not maintain a home in Hong Kong and who could not provide any proof on their last dwelling place in Hong Kong to apply to be registered to the residential address last recorded by the Immigration Department under the Registration of Persons Regulation as a last resort was acceptable;</p> <p>(b) visits should be allowed irrespective of whether they were made in official capacities or not in order to ensure equal treatment, provided that they were conducted in accordance with the electoral laws and in compliance with the principle of fairness; and</p> <p>(c) the Administration should consider the practical voting arrangements for imprisoned persons residing in half-way houses.</p> <p>Response of the Administration that -</p> <p>(a) if a person was "imprisoned" in a half-way house, the electoral arrangements would be the same as those of imprisoned persons;</p> <p>(b) if a person was allowed to go out without staff escort while residing in a half-way house, the electoral arrangements would be the same as those of ordinary registered electors; and</p> <p>(c) REO would clarify the above with CSD.</p>	
010626 - 011530	Ms Audrey EU Administration Chairman	<p>The Administration was requested to -</p> <p>(a) explain the legal basis for precluding an imprisoned person from using his prison cell as the registered address for voter registration;</p> <p>(b) advise from the legal point of view whether the address of a prison could be used for such purpose;</p>	<p>Admin</p> <p>Admin and ALA9</p>

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(c) provide justifications for the policy decision to preclude an imprisoned person from doing so if it was permissible legally; and</p> <p>(d) explain whether treating invalid addresses (which no longer existed) as residential addresses of electors was consistent with the electoral laws.</p>	<p>Admin</p> <p>Admin</p>
011531 - 012423	Mr James TO Administration Chairman	<p>Mr James TO made the following requests</p> <p>(a) the Administration to provide information on the case law regarding the mentally-ill person using the hospital address as his residential address and ALA9 to provide an analysis of the case;</p> <p>(b) the Administration to explain the voting arrangements for imprisoned persons residing in half-way houses; and</p> <p>(c) the Administration to explain the relevant arrangements in paragraph 5 of LC Paper No. CB(2)1533/08-09(01) applicable to imprisoned persons sentenced for life or prolonged imprisonment who had already registered as electors.</p> <p>Views expressed by Mr TO -</p> <p>(a) the use of a prison address as the residential address of an imprisoned person for the purpose of voter registration should be allowed under exceptional circumstances, e.g. the person was serving life or prolonged imprisonment;</p> <p>(b) an imprisoned person should not be given a choice to opt for a prison address, but the Electoral Registration Officer should decide, based on a set of conditions to be stipulated in law, whether that person could use the prison address as his residential address for voter registration; and</p> <p>(c) community matters such as availability of convenient transportation for his visitors and air quality could be of concern to an imprisoned person and depriving him</p>	Admin & ALA9

Time Marker	Speaker(s)	Subject(s)	Action required
		of the right to vote in a constituency he was closely connected with could be regarded as discriminatory	
012424 - 012822	Mr Paul TSE Chairman Administration	Views expressed Mr Paul TSE as follows - (a) the proposed arrangement in paragraph 5(c) of LC Paper No. CB(2)1533/08-09(01) was too arbitrary and impractical; and (b) consideration should be given to allowing an imprisoned person sentenced for life or prolonged imprisonment to register the prison address as his residential address for the purpose of voter registration.	
012823 - 013504	Chairman Administration Clerk Mr Paul TSE Ms Audrey EU	Working timetable for the Bills Committee and the legislative timetable for introducing subsidiary legislation into LegCo	
013505 - 013932	Chairman Administration	Clause-by-clause examination of the Bill <u>Part 1 - Short title</u> Clause 1 Committee Stage amendments proposed by the Administration to include a commencement clause (LC Paper No. CB(2)1735/08-09(01)).	
013933 - 014132	Chairman Administration	<u>Part 2 - Amendments to the Chief Executive Election Ordinance</u> Clause 2	
014133 - 014322	Chairman Administration	<u>Part 3 - Amendments to the Legislative Council Ordinance</u> Clause 3	
014323 - 015025	Chairman Administration Ms Audrey EU Administration Chairman Dr Priscilla LEUNG Mr Paul TSE	Clause 4 The Administration was requested to review the Chinese wording of the proposed section 24(3)(b) which had an implied meaning that the prison could be a home.	Admin
015026 - 015047	Chairman Administration	Agreement of members that clause 5 should be scrutinized at the next meeting pending the Administration's response to the relevant issues raised by members.	
015048 - 015306	Chairman Administration	Clauses 6 - 7	

Time Marker	Speaker(s)	Subject(s)	Action required
015307 – 015353	Chairman Administration	<u>Part 4 - Amendment to the District Councils Ordinance</u> Clause 8	
015354 - 015612	Chairman Administration Mr Paul TSE	<u>Part 5 - Amendments to the Village Representative Election Ordinance</u> Clauses 9 - 10	
015613 - 015724	Chairman ALA9	Confirmation by ALA9 that the legal and drafting aspects of the English text of the above clauses were in order.	
015725 - 015851	Chairman Clerk Ms Audrey EU	Date of next meeting To relay to the Hong Kong Bar Association the primary issue of concern as to whether, from a legal point of view, a prison address could be used by an imprisoned person as his residential address for the purpose of voter registration.	Clerk

Council Business Division 2
Legislative Council Secretariat
26 June 2009