

Bills Committee on Voting by Imprisoned Persons Bill

The Administration's responses to issues raised by Members at the meeting on 8 June 2009

Introduction

This paper sets out the Administration's responses to the issues raised at the Bills Committee meeting held on 8 June 2009.

Reference to "outside the prison" in Clauses 4 and 5 of the Bill

2. In response to a Member's enquiry at the Bills Committee meeting on 1 June 2009, we proposed to move a committee stage amendment ("CSA") to Clauses 4 and 5 of the Bill to remove the words "outside the prison" from the proposed sections 24(3)(b), 28(1A)(b) and 28(2A)(b) of the Legislative Council Ordinance (Cap. 542) ("LCO"). For details, please refer to the previous paper of the Administration to the Bills Committee (CB(2) 1812/08-09(01)).

3. At the last Bills Committee meeting on 8 June 2009, however, some Members considered that the words should not be removed. As the Administration indicated at the meeting, we have no problem with reverting to the original version of the clauses. In this regard, we have decided not to put forward the proposed CSA concerned.

Registered Address for Prisoner-Electors

4. At the meeting on 8 June 2009, some Members asked the Administration to re-consider the possibility of allowing persons serving life imprisonment ("lifers") to use prison address as the registered address for voter registration purposes.

Arrangement for the general public

5. We should stress at the outset that the current electoral legislation has prescribed the address to which each person should be registered as an elector, if he applies for such registration.

6. Under section 28(1)(b) of the LCO, a person applying for registration must satisfy the Electoral Registration Officer, among other things, that the residential address notified in his application is

the person's only or principal residence in Hong Kong. According to section 28(3) of the LCO, a person's only or principal residence in Hong Kong refers to a dwelling-place in Hong Kong at which the person resides and which constitutes the person's *sole or main home*.

7. Accordingly, there is no question of an elector being given a choice among various addresses (even if he has more than one home) as his "registered address". Even if a person has more than one home in Hong Kong, it is still a statutory requirement for the person concerned to be registered only to the dwelling place in Hong Kong "at which the person resides and which constitutes the person's sole or main home".

Arrangement for imprisoned persons

8. When working out the arrangement for imprisoned persons, we have worked out different arrangements to cater for imprisoned persons under different scenarios. However, it remains that, for a prisoner under each scenario, there is only one address which can be accepted as his registered address. The details are set out below. There is, again, no question of an imprisoned person being given a choice among various addresses as his "registered address" :

- (a) for prisoners who maintain a home in Hong Kong outside the prison, they can apply to be registered to their home address, as in the case of non-prisoners;
- (b) for prisoners who do not maintain a home in Hong Kong, they can apply to be registered to their last dwelling place in Hong Kong, but they will be required to provide proof on such an address; and
- (c) for prisoners who do not maintain a home in Hong Kong and who cannot provide any proof on their last dwelling place in Hong Kong (i.e. when both (a) and (b) above are not applicable), they can apply to be registered to the residential address last recorded by the Immigration Department under the Registration of Persons Regulations as a last resort.

9. It is the Administration's understanding that the proposed measures specified in paragraph 8(a)-(c) above merely set out the procedure for the registration of prisoner-electors. They will ensure that all eligible imprisoned persons will have a "registered address" to enable them to exercise their right to vote. Hence our proposal is consistent with the relevant provisions of the Basic Law.

Arrangement for lifers

10. The requirement for each elector to be eligible to be registered to one address only (i.e. absence of choice in respect of the address to which he should be registered) is aimed at minimising uncertainty, which is important to addressing concerns on vote-planting. This principle applies to voter registration for members of the general public and imprisoned persons, and should equally apply to persons sentenced to life imprisonment.

11. Thus, if lifers were given two options of either following the arrangement for other imprisoned persons (as set out in paragraph 8 above) or being registered to the prison address, this would not be in keeping with our established practice that voters should only have one address to which they can be registered. From the policy angle, we consider that, lifers should follow the arrangement for other imprisoned persons. The considerations, set out in paragraph 12 of the previous paper of the Administration to the Bills Committee (CB(2)1762/08-09(02)), are recapped below :

- (a) As at 1 June 2009, there are 274 lifers in Hong Kong. The Long-term Prison Sentences Review Board established under the Long-Term Prison Sentences Review Ordinance (Cap. 524) will review each indeterminate sentence on a regular basis and make recommendations to the Chief Executive ("CE") on whether it can be commuted to a fixed term. The sentences of lifers may be commuted to determinate sentences by the CE upon the exercise of his power under Article 48(12) of the Basic Law. Such prisoners are essentially the same as prisoners with a fixed term of imprisonment and thus should be treated the same manner.

- (b) For security reasons, lifers may be transferred to different penal institutions from time to time with no fixed timetable subject to the operational need of the Correctional Services Department (“CSD”). If lifers are allowed to be registered to the prison address, the constituency to which a prisoner belongs would in a way be seen by some as it may be subject to the CSD’s arrangement.
- (c) Furthermore, we do not think that lifers have a closer connection with the community in which the penal institutions are located (compared to that of their last dwelling place), since lifers may be transferred between different penal institutions from time to time and they are held in confinement and separated from the community.
- (d) Regarding the distribution of lifers in the penal institutions, around 90% of them are currently detained in Stanley Prison and Shek Pik Prison. The concentration of lifers in these two prisons may lead to an unduly high proportion of prisoners in the registered electorate of the constituencies concerned.

12. The High Court judgment on 8 December 2008 on Choi Chuen Sun v. the Secretary for Justice and another (HCAL 83/2008) has re-affirmed that :

“the EAC [i.e. the Electoral Affairs Commission] 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)

In the light of the above judgment, we consider it inappropriate to amend the law in such a way as to allow lifers to be registered to their prison address, unless the jurisprudential basis for enacting a legislative provision to such effect has a very secure foundation.

13. Another angle is that, if lifers are subject to a set of arrangement different from the other imprisoned persons, some persons serving long sentence of imprisonment may also request similar treatment. Further, any line to be drawn for extending such different treatment (for example, persons serving a sentence of x years or above) would likely be arbitrary and may give rise to further queries and judicial challenges.

Public Consultation on Prisoners' Voting Right

14. At the meeting of the Bills Committee held on 8 June 2009, there were also enquiries about the breakdown of the submissions received during the public consultation exercise on prisoners' voting right which commented on the registration arrangements for prisoners without a sole or main home outside the prison.

15. A total of 41 submissions provided views on the issue specified in paragraph 14 above. Amongst these submissions, 27 submissions supported that the last dwelling place of prisoners in Hong Kong should be deemed to be their only or principal residence in Hong Kong for the purpose of voter registration¹. Another 13 submissions considered that the prison address should be used for the registered address. One submission was of the view that prisoners should be allowed to choose their own registered address.

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¹ Of the 27 submissions received, one of them also supported the option of using the address of the next-of-kin of the prisoners.