

立法會
Legislative Council

LC Paper No. LS90/08-09

**Paper for the House Committee Meeting
on 26 June 2009**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 19 June 2009**

Date of tabling in LegCo : 24 June 2009

Amendment to be made by : 2nd meeting of LegCo in the next session (or the 1st meeting after 21 days from the 2nd meeting of the next session if extended by resolution)

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 (L.N. 130)

Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 (L.N. 131)

Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 (L.N. 132)

Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 (L.N. 133)

Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 (L.N. 134)

In view of a Court of First Instance judgment which held that provisions which disqualify prisoners from being registered as electors and voting in an election of members of the Legislative Council contravene the right to vote constitutionally guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights, the Voting by Imprisoned Persons Bill (the Bill) was introduced into the Legislative Council on 6 May 2009 to remove the existing disqualifications on imprisoned persons from being registered as electors and from voting in the relevant elections. A Bills Committee was formed to scrutinize the Bill and its second reading will be resumed on 24 June 2009.

2. The above five Amendment Regulations (Amendment Regulations) were made by the Electoral Affairs Commission under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541) to make provisions for voting at elections of the Chief Executive, members of the Legislative Council (LegCo), members of District Council (DC), members of the Election Committee and Village Representatives (VR) by persons -

- (a) who are serving sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; and
- (c) otherwise detained by any law enforcement agency under any lawful authority

(elector in custody).

3. The Amendment Regulations respectively amend the corresponding principal Regulations for -

- (a) designating dedicated polling stations (DPSs) in prisons or other suitable places such as police stations and making provisions for the supervision and regulation of the ballot at such DPSs;
- (b) designating ballot paper sorting stations (BPSSs) for sorting ballot papers cast at the DPSs;
- (c) prohibiting canvassing activities by visitors during visits made in their business or official capacities (for example, as justice of the peace, social worker or solicitor) to electors in custody;
- (d) empowering the relevant personnel including the Presiding Officer of a DPS and officers of the Correctional Services Department and other law enforcement agencies such as the Customs and Excise Department, the Hong Kong Police Force and the Immigration Department, to maintain order at DPSs;
- (e) providing special arrangements for observing the poll at DPSs so that -
 - (i) for DPSs situated inside maximum security prisons, only candidates may enter; and
 - (ii) for other DPSs situated in penal institutions, either a candidate, an election agent or a polling agent may enter while application to the Commissioner of Correctional Services is required for an election agent or a polling agent;
- (f) protecting the privacy of electors in custody and the secrecy of their votes cast at DPSs by-
 - (i) making disclosure of the identity of electors in custody by any person an offence;
 - (ii) using an envelop to enclose a DC or VR ballot paper whenever the ballot paper is required to be sorted in a BPSS; and

- (iii) mixing of the ballot papers cast by electors in custody with those cast by other electors before the votes are counted; and
- (g) making provisions for other related matters.

4. The Amendment Regulations will come into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

5. At its meeting on 18 May 2009, the Panel on Constitutional Affairs was consulted on the practical arrangements to facilitate registration of prisoners as electors and voting by prisoners and persons held in custody including remanded and detained persons who were registered electors in public elections. Some members expressed concern that the mixing of ballot papers cast by prisoners and persons held in custody with those cast by other electors before counting of votes would delay the whole process.

6. During the scrutiny of the Bill, issues relating to the administrative and security arrangements for prisoners and remanded unconvicted persons to vote on the polling day were also raised. According to the Administration, another set of amendment regulations to make the necessary changes to electoral registration arrangements are in preparation and are expected to be gazetted shortly.

7. Members may refer to the LegCo Brief (Ref: REO 14/32/5(CR)) issued by the Registration and Electoral Office on 18 June 2009 for background and other information.

8. The Legal Service Division is still scrutinising the legal and drafting aspects of the Amendment Regulations and will make a further report to members if necessary.

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22 June 2009