

Legislative Council Panel on Constitutional Affairs

Practical Arrangements for Voting by Prisoners

INTRODUCTION

This paper seeks Members' views on the practical arrangements to facilitate the registration of prisoners as electors, and the voting by prisoners and persons held in custody including remanded and detained persons who are registered electors in public elections.

BACKGROUND

2. In August 2008, the Court granted leave to three judicial review ("JR") applications which challenged the constitutionality of the restrictions on prisoners' right to be registered as electors and to vote under the Legislative Council Ordinance ("LCO") (Cap. 542). After hearing the cases in November 2008 and February 2009, the Court declared that the existing across-the-board restrictions on prisoners' right to be registered as electors and to vote under the LCO were unconstitutional; and that arrangements should be made to enable prisoners and remanded unconvicted persons to vote on the election day in a Legislative Council ("LegCo") election. The Court granted a temporary suspension order in relation to its declarations relating to prisoners' voting right up to 31 October 2009.

3. To take forward the Court's judgment on the JR cases, the Constitutional and Mainland Affairs Bureau ("CMAB") launched a public consultation exercise on prisoners' voting right from 9 February to 23 March 2009. The CMAB briefed the Panel on the results of the public consultation and the proposed way forward at the meeting on 20 April 2009, and introduced the Voting by Imprisoned Persons Bill into the LegCo on 6 May 2009.

4. We will also introduce amendments to the relevant subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) to provide for practical arrangements to facilitate registration of prisoners as electors and voting by prisoners and persons held in custody. The proposed practical arrangements are explained in the ensuing paragraphs.

PROPOSED PRACTICAL ARRANGEMENTS

Before the Poll

Registered Addresses

5. The Administration has previously consulted Members on the proposals on the registered address of prisoner-electors. Members' views have been reflected in the Bill introduced into the LegCo on 6 May 2009. For prisoners who have not yet been registered as electors, if they apply for registration, the arrangement will be as follows-

- (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, 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.

Electoral Register

6. At present, provisional registers and omissions lists are made available for public inspection, and any notice of claim or objection are required to be delivered by the person making the claim or objection in person at the office of the Electoral Registration Officer ("ERO"). For prisoners and persons held in custody, arrangements will be made to enable them to inspect provisional registers and omissions lists within the penal institutions, and they would be allowed to submit notice of claim or objection to the office of the ERO by post.

7. In order to ensure the accuracy of the electoral register, if the ERO has reason to believe that the registered address of an elector is no longer his principal residential address, the Officer will, after making enquiries based on that registered address, put the name of the elector concerned in the omissions list. In the case of a prisoner-electoral who used his / her last dwelling-place in Hong Kong or the address last recorded by the Immigration Department for the purpose of voter registration, the relevant Electoral Affairs Commission Regulations will be amended so that the ERO will put the name of the elector concerned on the omissions list direct if the ERO is satisfied on reasonable grounds that the elector concerned has left the prison without reporting his / her new residential address to the ERO. REO will work with the Correctional Services Department (“CSD”) to put in place arrangements to remind prisoners leaving the prisons to update the ERO of their new residential address.

Access to Election-related Materials

8. As provided under the electoral regulations and under the established practice, the Registration and Electoral Office (“REO”) sends poll cards together with the candidates’ introductory leaflet to electors before the polling day. To ensure that electors who are serving prison sentences receive the poll cards and introductory leaflet as early as possible, REO would send such materials to their addresses in the penal institutions of the CSD as far as practicable. As for persons held in custody who are registered electors, the poll cards and candidates’ introductory leaflet would be sent to their registered address or correspondence address (if any). Additional copies of the candidates’ introductory leaflets would also be made available at CSD and other law enforcement agencies (“LEAs”) for such persons’ reference.

9. Candidates would be provided with gum labels containing the registered address or the correspondence address (if any) of the registered electors following the existing practice for mailing election advertisements.

10. Prisoners and persons held in custody who are registered electors could access election-related information through the mass media in accordance with the existing policies of the LEAs on access to the mass media.

Canvassing for Votes

11. Due to security considerations, arrangements would not be made to facilitate in-person canvassing activities inside a penal institution of the CSD or a premise of a LEA where persons are imprisoned or held in custody. For fairness purpose, no canvassing activities would be allowed by visitors during visits made in their official capacities to prisoners and persons held in custody.

Dedicated Polling Stations and Polling Hours

12. Dedicated polling stations would be set up inside penal institutions of the CSD or other suitable places such as police stations and registered electors who are imprisoned or held in custody would be allocated to vote in the respective polling stations. The REO would closely liaise with the CSD and LEAs to decide on the establishment of these dedicated polling stations.

13. Due to security reasons, there is a need to separate some prisoners/remanded persons from others inside the penal institutions. To maintain order in the penal institutions and ensure the safety of prisoners/remanded persons concerned, electors who are imprisoned or remanded would need to be escorted in batches or individually to the dedicated polling stations to cast their votes. The CSD would work out a schedule for escorting the electors concerned and give prior notification to them before the polling day.

During the Poll

Observing the Poll

14. As in other polling stations, candidates and/or their agents may observe the poll at the dedicated polling stations to guarantee the transparency of the elections. However, due to security reasons, some special arrangements would be made in respect of dedicated polling stations. Only candidates may enter dedicated polling stations set up inside maximum security prisons to observe the poll. For other dedicated polling stations, agents may also enter the stations to observe the poll but they would be required to make an application no later than one week before the polling day. A maximum of two

candidates or agents would be allowed to observe the poll at a dedicated polling station at any time. Observers will have to take turn in case more than two candidates/agents intend to observe the poll at the same time.

Special Arrangement for Casting the Votes for District Council and Village Representative Elections

15. An envelope would be used to enclose a District Council (“DC”) or Village Representative (“VR”) ballot paper cast at a dedicated polling station to preserve the secrecy of the votes, as the ballot paper would be sorted in a ballot paper sorting station specified in paragraph 18 below.

Keeping Order at the Dedicated Polling Stations

16. For dedicated polling stations set up inside the penal institutions of the CSD, officers of the CSD would help to maintain the order inside the dedicated polling stations. To maintain order and for security reasons, the Presiding Officer would also be empowered to order a registered elector to leave the dedicated polling station if the elector fails to cast his or her vote within a reasonable period of time.

17. Due to the sensitive nature of the identity of the electors who are imprisoned or remanded, in order to protect their privacy and safety, disclosure of the identity of electors inside a dedicated polling station will be prohibited.

After the Poll

Ballot Paper Sorting Station (“BPSS”)

18. One or more BPSSs would be designated for sorting ballot papers cast at dedicated polling stations according to each geographical constituency for LegCo general election, each constituency for DC ordinary election or each village for VR election before the ballot papers are transferred to the respective main counting stations. To ensure the transparency of the election, the sorting process would be open for observation.

Mixing of Ballot Papers

19. To safeguard the secrecy of votes cast at dedicated polling stations, these ballot papers would be mixed with the ballot papers cast by other electors before the votes are counted.

WAY FORWARD

20. To implement the above practical arrangements, we plan to introduce amendments to the relevant electoral regulations as soon as possible.

ADVICE SOUGHT

21. Members are invited to express views on the proposed practical arrangements as outlined in paragraphs 5 to 19 above.

Registration and Electoral Office
May 2009