## 立法會 Legislative Council

Ref: CB2/SS/9/10 <u>LC Paper No. CB(2)758/11-12</u>

(These minutes have been seen

by the Administration)

# Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission Ordinance

Minutes of the fourth meeting held on Friday, 17 June 2011, at 8:30 am in Conference Room B of the Legislative Council Building

**Members** : Hon IP Kwok-him, GBS, JP (Chairman)

present Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Hon WONG Yung-kan, SBS, JP

Hon LAU Kong-wah, JP

Hon Emily LAU Wai-hing, JP Hon TAM Yiu-chung, GBS, JP Hon WONG Kwok-hing, MH

Hon CHEUNG Hok-ming, GBS, JP Hon WONG Ting-kwong, BBS, JP

Hon Cyd HO Sau-lan

Dr Hon Priscilla LEUNG Mei-fun Hon WONG Kwok-kin, BBS Hon Paul TSE Wai-chun

Hon Alan LEONG Kah-kit, SC

Hon Tanya CHAN

**Member** : Hon WONG Yuk-man

absent

**Public Officers** attending

Constitutional and Mainland Affairs Bureau

Mr Arthur HO

Deputy Secretary for Constitutional and Mainland

**Affairs** 

Mr Freely CHENG Kei

Principal Assistant Secretary for Constitutional and

**Mainland Affairs** 

Mr Thomas WU Kui-wah Assistant Secretary for Constitutional and Mainland Affairs

#### **Department of Justice**

Miss Emma WONG

Senior Government Counsel

#### Registration and Electoral Office

Mr LI Pak-hong

Chief Electoral Officer

Mr Anthony CHAN Shiu-lun Principal Electoral Officer

**Clerk in** : Miss Flora TAI

attendance Chief Council Secretary (2)3

**Staff in** : Mr Kelvin LEE

**attendance** Assistant Legal Adviser 1

Ms Catherina YU

Senior Council Secretary (2)6

Mrs Fonny TSANG

Legislative Assistant (2)3

Action

## I. Meeting with the Administration

[REO ES/23/52, LC Paper Nos. LS60/10-11, CB(2)1978/10-11(01) and (LC Paper No. CB(2)2155/10-11(01)]

Scrutiny of detailed provisions of the subsidiary legislation

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

- 2. The Administration's briefing on the proposed arrangements in response to members' concern raised at the meeting on 14 June 2011 about the annual cut-off date for registering the particulars relating to candidates on ballot papers for Legislative Council Election and District Council Election as detailed in its paper (LC Paper No. CB(2)2155/10-11(01)).
- 3. The Administration was requested to follow up on the issues raised in respect of the provision of guidelines regarding candidates' declaration as "Independent Candidate" and "Non-affiliated Candidate" and the governing of false declaration made by candidates pertaining to their political affiliation on ballot papers.

#### Conclusion

4. <u>The Subcommittee</u> raised no objection to the nine Amendment Regulations. As regards the legal and drafting issues, <u>Assistant Legal Adviser 1</u> ("ALA1") raised no query about the English version of the nine Amendment Regulations. <u>Members</u> noted that the deadline for giving notice of amendments was 28 June 2011 and agreed that the Subcommittee would report on its deliberations to the House Committee on 24 June 2011.

### II. Any other business

5. There being no other business, the meeting ended at 10:40 am.

Council Business Division 2
<u>Legislative Council Secretariat</u>
6 January 2012

## Proceedings of the fourth meeting of the Subcommittee on Nine Amendment Regulations made under the Electoral Affairs Commission Ordinance on Friday, 17 June 2011 at 8:30 am in Conference Room B of the Legislative Council Building

Time Marker	Speaker(s)	Subject(s)	Action required
000202 - 000222	Chairman	Opening remarks	1
000223 - 000336	Chairman Administration	Scrutiny of detailed provisions of the subsidiary legislation (LC Paper No. CB(2)1978/10-11(01)).  Electoral Affairs Commission (Nominations Advisory Committees (Legislative Council)) Regulation (Cap. 541 sub. leg. C)  Section 1 - Interpretation  Briefing by the Administration on the proposed amendments.	
000337 - 001304	Chairman Administration	Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)  Section 34 – Chief Electoral Officer to appoint or remove Presiding Officers, etc. for each polling station  Section 91 – Presiding Officer may perform functions through polling officers  Section 102 – Election advertisements  SCHEDULE 2  Section 3 – Adjournment of poll at a particular polling station  Section 4 – How a declaration for the purposes of sections 1, 2 and 3 is to be made and what it is to contain  Section 2 – Interpretation – Part 3, Amendments to Refine Voting Arrangements for Electors in Custody  Briefing by the Administration on the proposed amendments.	

Time Marker	Speaker(s)	Subject(s)	Action required
		Sections 74AA – Arrangements for sorting in ballot paper sorting stations	
		The Chairman's enquiry and the Administration's explanation on the improved arrangements for vote counting procedures in polling stations.	
		Section 22A – Returning Officer to notify and declare if a validly nominated candidate for a GC is proved to have died	
		Section 22B – Returning Officer to notify and declare if a validly nominated candidate for a GC is proved to be disqualified	
		Section 30 – Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors and authorized representatives	
		Section 38 – Chief Electoral Officer to supply list of polling officers to assist Presiding Officer	
		Section 40 – Returning Officer to determine no canvassing zones and no staying zones	
		Section 41- Presiding Officer to keep order in no canvassing zone and no staying zone	
		Section 42 – Candidates may appoint polling agents	
		Briefing by the Administration on the proposed amendments.	
001305 - 002007	Chairman Administration ALA1	Section 52 – A candidate or election agent or polling agent may challenge a person who has applied for a ballot paper or who has voted	
	Mr TAM Yiu-chung	In response to Mr TAM Yiu-chung's enquiry, the Administration explained further on the proposed amendments.	
		Section 74A – Arrangements for verification of ballot paper account at GC counting station	
		Section 2 – Interpretation, Part 4, Amendments Consequential to Legislative Council (Amendment) Ordinance 2011 (2 of 2011)	

Time Marker	Speaker(s)	Subject(s)	Action required
		Section 10 – How to nominate a candidate for a geographical constituency	
		Section 16 – Returning Officer to decide whether candidates are validly nominated	
		Section 18 – Returning Officer may give opportunity to rectify a nomination form	
		Section 21 – Returning Officer to publish a notice of particulars of validly nominated candidates	
		Section 22A – Returning Officer to notify and declare if a validly nominated candidate for a GC is proved to have died	
		Section 22B – Returning Officer to notify and declare if a validly nominated candidate for a GC is proved to be disqualified	
		Section 22C – No poll upon death or disqualification of candidate for a GC under certain circumstances	
		Section 23 – A candidate or a list of candidates may appoint election agent	
		Section 24 – Returning Officer to send to other candidates a notice of particulars of election agent	
		Section 35 – Chief Electoral Officer to supply candidates with copy of final register	
		Section 40 – Returning Officer to determine no canvassing zones and no staying zones	
		Section 42 – Candidates may appoint polling agents	
		Briefing by the Administration on the proposed amendments.	
002008 - 003158	Chairman Administration Mr TAM Yiu-chung	Section 49 – Form of ballot papers and order of appearance of lists or names of candidates on ballot papers  The Chairman's suggestion that same color should be used for ballot papers and ballot box for the District Council (second) functional constituency	

Time Marker	Speaker(s)	Subject(s)	Action required
		to avoid misplacing of ballot papers in the ballot box of the geographical constituencies.	•
		The Administration's elaboration on the voting procedures. The Administration would consider members' suggestion and report to Panel on Constitutional Affairs ("CA Panel") concerning the detailed arrangements for voting.	
003159- 003313	Chairman ALA1 Administration	ALA1's remarks that the Administration would submit amendments to section 35(2) of Cap. 541 sub. leg. D.	
		The Administration's explanation on the relevant amendments to be made to section 35(2) of Cap. 541 sub. leg. D.	
		Section 54 – Procedure for voting	
		Section 57 – How ordinary functional constituency ballot papers are to be marked	
		Section 66 – Candidates may appoint counting agents	
		Section 80 – Votes recorded on invalid ballot papers not to be counted	
		Section 81 – Returning Officer or Presiding Officer to make decisions on questionable ballot papers	
		Section 83 – Returning Officer to declare election result	
		Section 84 – The form in which Returning Officer is to publish result of election	
		SCHEDULE 3	
		Briefing by the Administration on the proposed amendments.	
003314 - 003534	Chairman Administration	Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) Section 2 – Interpretation	
		Section 24 – Returning Officer to notify and declare if a validly nominated candidate is proved to have died	

Time Marker	Speaker(s)	Subject(s)	Action required
		Section 25 – Returning Officer to vary decision if a validly nominated candidate is proved to be disqualified	-
		Briefing by the Administration on the proposed amendments.	
		Section 28 – A candidate may authorize persons to incur election expenses on the candidate's behalf	
		In response to the Chairman's enquiry, the Administration explained that according to legal advice, sending the notice of revocation by email was regarded as having the same effect as sending it by facsimile transmission.	
		Section 33 – Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors	
		Section 37 – Chief Electoral Officer to appoint or remove Presiding Officers, etc. for each polling station	
		Section 41 – Chief Electoral Officer to supply list of polling officers to assist Presiding Officer	
		Section 43 – Returning Officer to determine no canvassing zones and no staying zones	
		Section 44 – Presiding Officer to keep order in no canvassing zone and no staying zone	
		Section 45 – Candidates may appoint polling agents	
		Section 48 – What constitutes an offence at a polling station	
		Section 55 – A candidate or election agent or polling agent may challenge a person who has applied for a ballot paper or who has voted	
		Section 64 – Presiding Officer to prepare a ballot paper account for each packet of sealed ballot papers	
		Briefing by the Administration on the proposed amendments.	

Time Marker	Speaker(s)	Subject(s)	Action required
003535 - 004630	The Chairman Mrs Sophie LEUNG Administration	Section 69 – What constitutes an offence at a counting station	
	Administration	In response to Mrs Sophie LEUNG's enquiry, the Administration explained that section 69 was the only provision in the Cap. 541 sub. leg. F. having the expression "during the relevant period". The same provision also appeared in other election-related legislation.	
		Section 75 – Presiding Officer to verify ballot paper account	
		Section 75A – Arrangements for sorting in ballot paper sorting stations	
		Section 95 – Procedure after election proceedings are terminated	
		Section 99A – Election return to be lodged in specified form	
		Section 103 – Election advertisements	
		SCHEDULE 1	
		SCHEDULE 3	
		Briefing by the Administration on the proposed amendments.	
004631 - 004924	The Chairman Administration	Electoral Affairs Commission (Electoral Procedure)(Election Committee) Regulation (Cap. 541 sub. leg. I)	
		Section 13 – Returning Officer to decide whether candidates are validly nominated	
		Section 20 – Returning Officer to notify or declare if validly nominated candidate has died	
		Section 21 – Returning Officer to notify or declare if validly nominated candidate is disqualified	
		Section 30 – Chief Electoral Officer may arrange for voting for subsectors to take place at polling station and to allocate polling stations to voters and authorized representatives	

Time Marker	Speaker(s)	Subject(s)	Action required
		Section 34 – Chief Electoral Officer to appoint or remove Presiding Officers, etc. for each polling station	
		Section 38 – Chief Electoral Officer to supply list of polling officers to assist Presiding Officer	
		Section 40 – Returning Officer to determine no canvassing zones and no staying zones	
		Section 41 – Presiding Officer to keep order in no canvassing zone and no staying zone	
		Section 42 – Candidates may appoint polling agents	
		Briefing by the Administration on the proposed amendments.	
004925 - 005025	Chairman Administration	Section 44 – Who may enter or be present at polling station	
	ALA1	The Administration's explanation that as"執勤" was used in other provisions and to be consistent, it was proposed to replace "當值" by "執勤" in section 44(4)(i).	
		ALA1's views that although there was a slight difference in the meaning between "當值" and "執勤", the proposed term "執勤" would not change the legal effect of the provision concerned.	
005026 - 005613	Chairman Administration	Section 45 – What constitutes offence at polling station	
		Section 52 – Candidate or election agent may challenge person who has applied for ballot paper or who has voted	
		Section 54 – Procedure for voting Section 66 – Who may be present at counting of votes	
		Section 77 – Ballot papers the votes recorded on which are not to be counted	
		Section 81 – Form in which Returning Officer is to publish result of subsector election	

Time Marker	Speaker(s)	Subject(s)	Action required
		Section 96 – Commission to designate Chief Returning Officer (Subsectors)	
		Section 100 – Election advertisements	
		SCHEDULE 2	
		Briefing by the Administration on the proposed amendments.	
005614 - 005835	Chairman Administration	Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J)	
		Section 8 – Nomination forms to be available for inspection	
		Section 11 – Notice of termination of election proceedings	
		Section 17 – Appointment of polling hours	
		Section 18A – Allocation of polling stations to electors in custody	
		Section 20 – Appointment of Presiding Officers and polling officers	
		Section 24 – Order in no canvassing zone and no staying zone	
		Briefing by the Administration on the proposed amendments.	
005836 - 005953	Chairman Administration	Section 26 – Admission to polling station  In response to the Chairman's enquiry, the	
		Administration explained that given that there might be a large number of candidates, the	
		proposed new section 26(AA)(aa) was to impose a condition for entry into polling stations subject to the capacity of dedicated polling stations situated in maximum security prisons.	
005954 - 010144	Chairman Administration	Section 33 – Challenging a person who has applied for a ballot paper or who has voted	
		Section 47 – Order in the counting station	

Time Marker	Speaker(s)	Subject(s)	Action required
		Briefing by the Administration on the proposed amendments.	
010145 - 010254	Chairman Administration Mr Paul TSE	Section 54 – Notice of further round of voting  At the request of Mr Paul TSE, the Administration's elaboration on proposed amendments.	
010255 - 010622	Administration Chairman Mrs Sophie LEUNG	Mrs Sophie LEUNG's enquiry on the justifications for the proposed amendments for section 54(1)(b)(i) regarding the minimum number of votes a candidate should obtain.  The Administration's explanation that the amendment had been incorporated into the Chief Executive Election (Amendment) Bill 2010 which was passed at the Council meeting on 2 March 2011, the purpose of which was to enhance the representativeness of the Chief Executive-elect.	
010623 - 010703	Chairman Administration	Section 56 – Ballot papers to be sealed  Section 60 – Procedure after termination of election proceedings  Section 72 – Manner of giving notice  Section 81 – Election advertisement  Briefing by the Administration on the proposed amendments.	
010704 - 011248	Chairman Administration	Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L)  Section 2 – Interpretation  Section 17 - Returning officer to notify and declare if a validly nominated candidate is known before date of election to have died Section 18 – Returning Officer to notify and declare if a validly nominated candidate is known before date of election to be disqualified  Section 20 – Returning Officer to declare termination of election proceedings and procedure after termination	

Time Marker	Speaker(s)	Subject(s)	Action required
		Section 28A – Allocation of polling stations to electors in custody	
		Section 31 – Appointment of Presiding Officer and polling officers	
		Section 35 – Order at no canvassing zone and no staying zone	
		Section 37 – Admission to polling station	
		Section 44 – Challenging a person who has applied for a ballot paper or who has voted	
		Section 54 – Ballot paper account	
		Section 60A – Arrangements for sorting in ballot paper sorting stations	
		Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541 sub. leg. M)	
		Section 3 – Request by candidate for LC functional constituency or sole candidate on LC nomination list by candidate for DC constituency	
		Electoral Affairs Commission (Financial Assistance for Legislative Council Elections and District Council Elections) (Application and Payment Procedure) Regulation (Cap. 541 sub. leg. N)	
		Section 2 – Interpretation	
		Briefing by the Administration on the proposed amendments.	
011249 - 011737	Chairman Administration	Completion of scrutiny of the provisions of the subsidiary legislation.	
		Briefing by the Administration on the proposed arrangements in response to members' concern raised at the meeting on 14 June 2011 about the annual cut-off date for registering the particulars relating to candidates on ballot papers for Legislative Council Election and District Council Election as detailed in its paper (LC Paper No. CB(2)2155/10-11(01)).	

Time Marker	Speaker(s)	Subject(s)	Action required
		Subject to the views of the Subcommittee, the Administration would move the necessary resolutions at the Council meeting of 6 July 2011.	
011738 - 012029	Chairman Mr WONG Ting-kwong Administration	Mr WONG Ting-kwong's enquiry on —  (a) whether it was compulsory for candidates to specify the names of the prescribed bodies on ballot papers;	
		(b) the difference in the meaning between "Independent Candidate" and "Non-affiliated Candidate"; and	
		(c) whether other expressions could be used on ballot papers in addition to "Independent Candidate" and "Non-affiliated Candidate".	
		The Administration's response that –	
		(a) it was not mandatory for candidates to include the names of prescribed bodies on ballot papers; and	
		(b) the law had not defined the meaning of "Independent Candidate" and "Non-affiliated Candidate". It was the candidates' choice to indicate whether they were "Independent Candidate" or "Non-affiliated Candidate".	
012030 - 012521	Chairman Miss Tanya CHAN Administration	Miss Tanya CHAN's enquiry about whether it would constitute an offence of making false declaration if a candidate who had a political affiliation but declared as "Non-affiliated Candidate" or "Independent Candidate".	
		The Administration's response that at present, there was no legal requirement for candidates to run an election in his/her capacity as a member of a political party. In the case of complaint, the Registration and Electoral Office ("REO") would seek legal advice on candidates' declaration of their particulars on ballot papers.	
		Miss Tanya CHAN's suggestion that the indication of candidates' particulars on ballot papers could also be extended to elections other than the District Council elections and the Legislative Council elections to facilitate electors.	

Time Marker	Speaker(s)	Subject(s)	Action required
		The Administration undertook to consider Miss CHAN's suggestion in future.	
012522 - 012828	Chairman Ms Emily LAU Administration	Ms Emily LAU concurred with Miss Tanya CHAN's suggestion on candidates' particulars on ballot papers and her view that warning should be given to candidates who had made false declaration about their political affiliation on ballot papers. She called on the Administration to review the handling of false declarations.	
		The Administration would relay Ms LAU's views to the Electoral Affairs Commission ("EAC").	Admin
012829- 012926	Chairman Dr Priscilla LEUNG Administration	Dr Priscilla LEUNG's view that candidates belonging to a political party who wished to run an election as "Independent Candidate" should resign from their political party.	
		The Administration supplemented that according to section 35 of Cap. 541M, it was an offence to make false declarations. REO would take the necessary actions on the complaints about candidates' false declarations according to legal advice.	
012927 - 013434	Chairman Mr Paul TSE Mr WONG Ting-kwong Administration	Mr Paul TSE and Mr WONG Ting-kwong's views that unless there was a legal definition on political party, it might not be appropriate to impose rigorous restrictions on the declaration of political affiliation on ballot papers.	
013435 - 014014	Chairman Ms Emily LAU Administration	In response to Ms Emily LAU's enquiry about the role of EAC in the current exercise, the Administration advised that EAC was an independent statutory body and had made the Nine Amendment Regulations. EAC was responsible for the implementation of the electoral procedures to ensure that elections were conducted in an open and fair manner. REO was an executive arm of EAC and the Constitutional and Mainland Affairs Bureau would provide assistance in policy-related issues. All complaints concerning false declaration on candidates' political affiliation would be handled by EAC independently.	
014015 - 014131	Mrs Sophie LEUNG Chairman	Mrs Sophie LEUNG's enquiry and the Administration's response on the procedures	

Time Marker	Speaker(s)	Subject(s)	Action required
	Administration	relating to the handling of complaints about candidates' false declaration of their political affiliation.	
014132 - 014557	Chairman Dr Priscilla LEUNG Administration	Dr Priscilla LEUNG's views that the term "Independent Candidate" and "Non-affiliated Candidate" should be clearly defined to avoid disputes or frivolous complaints.	
		The Administration's response that explanation to candidates on the particulars to be printed on ballot papers would be strengthened with a view to clarifying any misunderstanding candidates might have on the two terms.	
014558 - 014822	Chairman Mr Paul TSE	Mr Paul TSE's view that it would be difficult to prove a false declaration in law in the absence of any legal definition of political parties. Guidelines on "Independent Candidate" and "Non-affiliated Candidate" should be provided to candidates to guard against pitfalls of false declaration.	
014823 - 015033	Chairman Ms Emily LAU ALA1 Administration	The Chairman sought members' views on the Administration's proposal about the cut-off date for registering the particulars relating to candidates on ballot papers for Legislative Council Election and District Council Election. Members supported the proposal.	
		ALA1's remarks that the Administration's proposal was procedurally in order. The Administration should move the necessary resolution at the Council meeting before the expiry of the amendment deadline on 28 June 2011.	
015034 - 015056	Chairman	Date of reporting to the House Committee	
015057 - 015529	Administration Ms Cyd HO Ms Emily LAU Dr Priscilla LEUNG Chairman	The Administration's recapitulation on the requirements for the submission of EAs and the way forward in this regard.  Ms Emily LAU's reiteration of the need for the Administration to conduct trial runs for the	
		collection of eEAs.  The Administration's advice that trial runs on the relevant computer systems would be conducted.	

Time Marker	Speaker(s)	Subject(s)	Action required
015530 - 020137	Chairman Administration Ms Emily LAU Mr Paul TSE	In response to members' concern raised at the meeting on 14 June 2011 concerning voter registration and polling, the Administration advised that –	
		(a) 6 187 complaints were received in 2007 District Council election, of which about 31% were related to election advertisements;	
		(b) 3 480 complaints were received in 2008 Legislative Council election, of which about 24% were related to election advertisements;	
		(c) 62 672 electors were included in the 2009 omissions list for the geographical constituencies, of which 23 883 were deceased electors;	
		(d) 27 467 electors were included in the 2010 omissions list for the geographical constituencies, of which 25 200 were deceased electors; and	
		(e) REO did not keep statistics on the cases on persons who were refused to cast votes at polling stations in past elections. REO would consider compiling and maintaining statistics on these cases in future elections.	
		At the request of the Chairman and Ms Emily LAU, the Administration would provide the above-mentioned information in writing after the meeting.	Admin
		Closing remarks	

Council Business Division 2 <u>Legislative Council Secretariat</u> 6 January 2012