



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

URGENT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/14/13-14
電話 TELEPHONE : 3919 3504

傳真 FAX : 2877 5029
電郵 E-MAIL : kylee@legco.gov.hk

By Fax (2840 1976)
28 May 2014

Miss Helen CHUNG
Principal Assistant Secretary
(Constitutional & Mainland Affairs)
Constitutional and Mainland Affairs Bureau
12/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Miss CHUNG,

Electoral Legislation (Miscellaneous Amendments) Bill 2014

We are scrutinizing the legal and drafting aspects of the above Bill.
We would be most grateful if you may clarify the following matters.

Part 2 Division 2

Clause 3, the Chinese rendition

Clause 3 proposes to introduce a new section 2A to the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A). The Chinese rendition of the proposed section 2A(2) provides that –

"(2) 如——

- (a) 某日期在本規例中訂明(不論是藉明確提述某月某日，或提述某個可根據本規例以其他方式確定的日子)，或根據本規例而訂定；

(b) 本規例某條文規定須在該日期或之前或在該日期作出某作為，或容許在該日期或之前或在該日期作出某作為；及

(c) 該日期適逢惡劣天氣警告日，

則在該日期之後而並非惡劣天氣警告日的下一個工作日，須視作為該條文就該作為而訂明或訂定(而非訂明或訂定該日期)。

In the proposed section 2A(2)(a), the underlined clause may give an impression that "日期" is the actor in that clause. Please consider whether that clause should be rewritten as 某日期在本規例中予以訂明.

Please also clarify the reason for adding "(而非訂明或訂定該日期)" towards the end of the proposed section 2A(2) when it is already provided that the date is "須視作" ("taken" in the English rendition). The English rendition contains no similar expression. I note that the proposed section 2A(4), which is similarly drafted, does not contain "(而非訂明或訂定該日期)".

Part 3 Division 2

Clause 31

Clause 31(2) seeks to add a new section 9(1)(ab) to Cap. 541A, under which in compiling a provisional register, the Electoral Registration Officer (ERO) must enter on the omissions list the names and principal residential address of –

"(ab) any person –

- (i) whose name is recorded in the existing final register; and
- (ii) who has, by a signed written notice, informed the Electoral Registration Office on or before the relevant date specified in subsection (5) that he or she does not wish to be registered in the register;"

It appears that if a person, whose name has never been recorded in the existing final register (like a person who seeks to be registered as an elector for the first time), even if he signed a written notice indicating his or her

intention not to be included in the final register, that person's name and residential address will not be entered on the omissions list. Please clarify whether this is the intended legal effect.

Clause 31(5) also seeks to add a new section 9(4A), which provides that –

"The Electoral Registration Officer must acknowledge, by registered post, the receipt of a notice referred to in subsection (1)(ab)(ii).".

If the acknowledgement of receipt is returned and undelivered, or the ERO is not able to verify the authenticity of the signed notice, please clarify whether the ERO would enter the relevant elector on the omissions list. Please also clarify whether it should set out in the proposed section 9(4A) as to which address the ERO should deliver the acknowledgement of receipt.

Part 5 Division 2

Clause 39

Clause 39(2) proposes to introduce a new section 42(8AA) to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), which provides that –

"(8AA) The appointment of a polling agent for a dedicated polling station situated in a prison is effective only –

(a) if –

- (i) a notice of the appointment is delivered to the Chief Electoral Officer at least one week before polling day; and
- (ii) the Commissioner of Correctional Services (**Commissioner**) consents to the appointment; or

(b) if –

- (i) the Commissioner is satisfied that an elector in custody or authorized representative in custody who is entitled to vote for the relevant constituency at the polling station is admitted or transferred to the prison during the week before polling day;

- (ii) a notice of the appointment is delivered to the Chief Electoral Officer after the admission or transfer during the week; and
- (iii) the Commissioner is satisfied that the notice is delivered without undue delay and consents to the appointment."

In relation to the proposed section 42(8AA)(a), please clarify whether a candidate appointing a polling agent is required to obtain the Commissioner's consent before submitting the notice of appointment to the Chief Electoral Officer (CEO).

While I appreciate that the proposed section 42(8AA)(b)(ii) is modeled on the existing section 42(8B), please clarify whether a candidate is required to ascertain that an elector or authorized representative has been admitted or transferred to the relevant prison before submitting a notice of appointment.

We should be most grateful if you may let us have your reply in both Chinese and English as soon as practicable.

Yours sincerely,



(Kelvin Ka-yun LEE)
Assistant Legal Adviser

c.c. D of J (Attn.: Mr Gilbert MO, DLD) (By Fax: 2869 1302)
D of J (Attn.: Miss Queenie WU, GC) (By Fax: 2536 8215)

Clerk to Bills Committee