

立法會
Legislative Council

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LC Paper No. CB(2)2007/14-15
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 18 May 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon Gary FAN Kwok-wai
Hon Charles Peter MOK, JP

Hon CHAN Chi-chuen
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

**Members
absent** : Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon MA Fung-kwok, SBS, JP
Dr Hon Kenneth CHAN Ka-lok

**Public Officers
attending** : Items II to IV

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland Affairs

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Miss Candy MA Siu-hung
Principal Electoral Officer
Registration and Electoral Office

**Clerk in
attendance** : Ms Joanne MAK
Chief Council Secretary (2) 3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Cindy HO
Senior Council Secretary (2) 3

Mrs Fanny TSANG
Legislative Assistant (2) 3

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I. Information papers issued since the last meeting
[LC Paper Nos. CB(2)1363/14-15(01) and (02)]

The Panel noted the referral from the Public Complaints Office on improving voting arrangements for persons with visual impairment and a related submission from the Hong Kong Blind Union.

II. Items for discussion at the next meeting
[LC Paper Nos. CB(2)1459/14-15(01) and (02)]

2. Members agreed to discuss the following items proposed by the Administration at the next meeting on 15 June 2015 at 2:30 pm -

- (a) provisional recommendations on boundaries and names of geographical constituencies for the 2016 Legislative Council ("LegCo") General Election; and
- (b) briefing by the Chairperson of the Equal Opportunities Commission.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, item 2(b) was deferred to the meeting on 20 July 2015.)

III. Proposed guidelines issued by the Electoral Affairs Commission ("EAC") on Election-related Activities in respect of the District Council ("DC") Election ("the Proposed Guidelines")
[LC Paper Nos. CB(2)1409/14-15, CB(2)1459/14-15(03) and (04)]

3. At the invitation of the Chairman, the Chief Electoral Officer ("CEO") of the Registration and Electoral Office ("REO") briefed members on the salient points of the Administration's paper [LC Paper No.

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CB(2)1459/14-15(03)]. Members noted the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1459/14-15(04)].

Discussion

Participation of civil servants in election-related activities

4. In response to Mr Jeffrey LAM's enquiry about the restriction on the participation of civil servants in electioneering activities, CEO said that according to the Civil Service Bureau's guidelines, certain officers at the senior level and those who might be particularly susceptible to accusations of bias because of the nature of their duties, namely, Directorate Officers, Administrative Officers, Police Officers and Information Officers, were prohibited from participating in any form of electioneering. Civil servants of other categories might act as agents or assist in electioneering activities provided that they were not already appointed as Returning Officers ("ROs"), Assistant Returning Officers, Presiding Officers, polling or counting staff, there was no conflict of interest with their official duties, no use of public resources was involved, and no government uniform was worn. Mr LAM further enquired whether civil servants could exchange views via social media platforms on candidates or on their election platforms. CEO explained that civil servants would need to observe the relevant guidelines set out by the Civil Service Bureau. He added that particular care should be taken if reference could be made from the views and comments to identify the candidate(s) concerned because views and comments made for the purpose of promoting or prejudicing a candidate or candidates would be treated as election advertisements ("EAs"). Publishing such views on an open platform such as a social networking website would be subject to relevant requirements governing EAs under the Proposed Guidelines.

Designated spots for EA display

5. Mr CHAN Kam-lam expressed concern about the arrangements for allocation of designated spots to candidates to display their EAs. He considered that the Proposed Guidelines on allocation of spots on private premises were unclear and caused confusion to candidates. CEO explained that identification of designated spots on government land/property was centrally coordinated by REO, and designation of these spots and their allocation to candidates for use to display their EAs was made by ROs concerned. As for display of EAs on private premises, written permission of the private owner or occupier would have to be obtained by the candidates themselves. According to the Proposed Guidelines, owners and occupiers of private premises should give all candidates competing in the

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same constituency fair and equal treatment in the display of EAs. For any non-compliance, EAC might issue a public statement of reprimand or censure against the management bodies of organizations and buildings concerned. Mr WU Chi-wai enquired whether a performance pledge would be set to ensure timely issuance of such public statements of reprimand or censure prior to relevant elections. CEO said that the time required for investigating each case varied depending on the circumstances but complaints would be dealt with expeditiously as far as practicable.

6. Dr CHIANG Lai-wan expressed concern about the improper display of EAs mounted at public places during an election period. CEO said that ROs would take enforcement action against EAs placed at public spots not specified in the list of "designated spots". He would relay members' concerns to ROs for their attention.

EAs and election returns

7. Mr CHAN Kam-lam suggested that there should be clearer guidelines on the use of office titles by candidates (e.g. professors, associate professors) in EAs to avoid misrepresenting the professional status of the candidate(s) concerned. CEO advised that it was an offence if a candidate or a person published a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing candidate(s) at an election. Cases of non-compliance and irregularity would be referred to the Independent Commission Against Corruption ("ICAC") for investigation.

8. Miss Alice MAK said that many candidates used electronic platforms for distribution of EAs to promote themselves. She expressed concern about the onward transmission of such EAs by a third party to people through other social networking websites without the knowledge and consent of the candidates concerned. Mr WONG Yuk-man pointed out that during the election period, it was not uncommon that web pages/chat groups might be set up by a third party to carry out smear campaign against a candidate. He enquired how the expenses so incurred would be counted towards the election expenses. CEO reiterated that the definition of EA was provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). A person who incurred expenses to publish any materials caught by the definition of EA without the prior consent of the candidate concerned might have breached section 23 of ECICO, as under the law only a candidate or a person who had been duly authorized by the candidate as his/her election expense agent might incur election expenses.

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Admin 9. Mr SIN Chung-kai and Dr Helena WONG considered that EAC should provide detailed guidelines on the regulation of EAs published/distributed through social networking or communication websites. They were concerned that an EA (e.g. a photo or video clip taken on a candidate by a supporter containing remarks about that candidate) might be uploaded on YouTube or Facebook by a supporter without the candidate's knowledge. Mr SIN asked how REO would take follow up actions in case an EA was published on an electronic platform registered overseas. CEO explained that the regulatory regime of EAs under ECICO was set out in Chapter 7 of the Proposed Guidelines. To address members' concerns about the use of social media platforms on the Internet for distribution of EAs, CEO agreed to relay members' concerns to ICAC for consideration of providing appropriate guidance on relevant issues. Dr Helena WONG also suggested that the Research Office of the LegCo Secretariat should conduct a research study on the legislative control implemented overseas on the use of social media platforms on the Internet for campaigning. The Chairman agreed to relay Dr WONG's request to the Research Office.

Exit poll

10. Mr CHAN Chi-chuen and Mr LEUNG Yiu-chung expressed concern about the possible use of exit poll results by political parties to plan their electioneering activities before the close of poll. They asked about the measures in place to strengthen the regulation of exit polls so as to ensure fairness in the elections (e.g. interviewers should not be allowed to carry mobile telephones or other communication devices to avoid premature disclosure of relevant figures). Mr LEUNG further suggested that EAC should restrict the number of organizations approved to conduct exit polls, and that an area outside each polling station should be designated for the exclusive use of interviewers and the electors being interviewed. Dr KWOK Ka-ki was of the view that only one single organization should be allowed to carry out interviews at each polling station.

11. CEO advised there was a need to strike a balance between the need to maintain order outside polling stations and respecting the freedom of expression, freedom of the press and academic freedom associated with the conduct of exit polls. To forestall any possible public suspicion about the integrity of the persons or organizations conducting exit polls (or the pollsters), organizations or persons applying for the conduct of exit polls were required to sign an undertaking not to release, directly or indirectly, the results of the exit polls before the close of poll to the specified parties. Subject to legal advice, the pollsters might be held legally liable for

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breaching the undertaking. EAC might make a reprimand or censure in a public statement which would include the name of the person or organization who/which failed to comply with the terms of the undertaking/guidelines. Furthermore, a list of approved pollsters would be uploaded to the election website before the polling day; and a notice showing the particulars of the approved pollsters with their contact numbers would also be displayed at each of the polling stations concerned. In addition, the interviewers were required to display prominently an identification device showing the identity of the organization conducting exit poll, and to read out a standard opening script to the interviewee, before conducting the interview, that the exit poll was not commissioned by the Government and that the interviewee was entirely at liberty as to whether to respond to the pollster.

No canvassing zone ("NCZ")

12. Mr WU Chi-wai enquired about the criteria for determining the size of a NCZ. CEO said that the NCZ outside polling stations served to provide the electors with a hindrance-free access to the polling station. The relevant RO, assisted by REO, would determine the size of NCZ outside a polling station taking into account the characteristics and special conditions of the polling station. Taking into account past experience, REO would review the size of NCZ in consultation with ROs and the rule of thumb remained that the size of NCZ should be kept to a minimum so as not to affect the electioneering activities of candidates. In response to Ms Claudia MO's enquiry, CEO said that relevant provisions relating to NCZ and No Staying Zone should be observed by media organizations.

Checking measures in the 2015 voter registration ("VR") cycle

13. Miss Alice MAK enquired how the 1.6 million of electors covered by the checking measures in the 2015 VR cycle were identified. She also queried the basis for REO's seeking address proof from these electors. CEO said that of the 1.6 million electors, over 1.4 million were checked through full-scale cross-matching of the records with the Housing Department and the Hong Kong Housing Society. Based on the checking results and in accordance with the relevant electoral laws, REO had initiated the inquiry process for about 80 000 electors because REO had reasonable grounds to believe that their registered addresses were no longer their only or principal residence in Hong Kong. The electors in receipt of the inquiry letters were requested to confirm or update their registered addresses by completing the reply slips. He said that only when there was prima facie

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evidence to suggest that the electors concerned had already moved out of their registered addresses (e.g. addresses in buildings already demolished) or the relevant addresses were not for residential use would the electors be required to provide address proofs.

14. Mr Paul TSE expressed concern that the full-scale data matching exercise conducted on some 1.4 million of electors who were residing in the public housing estates ("PHEs") might amount to a form of discrimination as the arrangement was not made to electors residing in private housing. He said that some electors might choose not to respond to REO's letter in order not to disclose the fact that they were non-registered occupants of PHEs to the authorities concerned.

15. Ms Starry LEE expressed concern whether the checking measures were over-stringent and whether some electors (especially the elderly) might have lost their voting rights simply because they were not aware of REO's inquiry letters or the need to respond to such letters. Mr Steven HO suggested that REO might consider conducting home visits where necessary. CEO advised that in carrying out the checking process, REO would contact the electors concerned by phone, e-mail or fax according to the contact details they had provided, so as to remind them to confirm or update their registration particulars before the statutory deadline. REO would also issue reminder letters by surface mail to the electors whose names were included in the Omissions List to remind them to take appropriate remedial action on or before the statutory deadline of 25 August 2015 in order to reinstate their registration status. At the request of Ms LEE, CEO undertook to provide supplementary information on the checking measures during the 2015 VR cycle.

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(Post-meeting note: The supplementary information provided by REO was circulated to members vide LC Paper No. CB(2)1576/14-15(01) on 28 May 2015.)

16. Mr IP Kwok-him pointed out that some eligible voters (especially the elderly) would have difficulty in producing address proof if they were not registered occupants of the addresses, but the alternative means for the elector to make a statutory declaration before a Commissioner for Oaths/a practicing solicitor/a Justice of the Peace was not user-friendly. He pointed out that many electors residing on the Mainland who, without a residential address in Hong Kong but still commuted to Hong Kong to work, might use their relatives' address as the principal residential address for the purpose of VR. CEO advised that REO would accept the address proof of the relative who resided with the elector at the registered address together with a

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declaration made by the elector to confirm that they were residing at the same address.

17. Mr LEUNG Kwok-hung suggested that the Administration should consider allowing an elector to update his/her registered residential address via the enquiry hotline of REO. CEO advised that according to the existing provisions under the EAC (Registration of Electors) (LegCo Geographical Constituencies) (DC Constituencies) Regulation (Cap. 541A), an elector was required to submit a written notice to update his residential address.

18. Dr Priscilla LEUNG considered that the content of REO's letters issued to electors covered by the checking measures was not easily comprehensible. She stressed that in safeguarding the constitutional right to vote of Hong Kong permanent residents, there should be stringent vetting procedure to confirm that an elector had moved out prior to striking out an elector's name from the electoral register.

Other issues

19. Mr Paul TSE suggested that the Proposed Guidelines should state explicitly that the Revising Officer was a Magistrate. CEO agreed to give thought to the suggestion. Mr NG Leung-sing asked for the number of candidates who had breached ECICO in public elections or the electoral guidelines published by EAC. CEO said he recalled that no candidate was found to have contravened the EAC guidelines in the last election cycle. He would relay Mr NG's request to ICAC for provision of the requisite information concerning breaches of ECICO.

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IV. Practical arrangements for the 2015 DC Election

20. Due to shortage of time, members agreed to defer this item to the next meeting on 15 June 2015.

V. Any other business

21. There being no other business, the meeting ended at 4:30 pm.