

立法會
Legislative Council

LC Paper No. CB(2)68/14-15(02)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Information note prepared by the Legislative Council Secretariat
for the meeting on 20 October 2014**

**Disqualification of District Council Members and Rural Representatives
with unserved prison sentences from holding office**

The Panel on Constitutional Affairs ("the Panel") has not discussed the above subject before. As advised by the Administration, the above subject is related to paragraph 4.12 of the Administration's Consultation Paper on "Disqualification of candidates with unserved prison sentences and other related matters"¹ ("Consultation Paper") which is aimed to obtain public views on the disqualification of persons with unserved prison sentences as candidates at a Legislative Council ("LegCo") election and other related matters. The Consultation Paper was discussed at the Panel meeting on 21 July 2014. Paragraph 4.12 of the Consultation Paper is extracted below -

"Corresponding Amendments to other Electoral Laws

X X X X X

4.12 Whilst the circumstances in which a LegCo Member is disqualified from holding office are dealt with under Article 79 of the Basic Law, disqualification of a District Council ("DC") member/a Rural Representative from holding office is not governed by the Basic Law but specific provisions in the DCO/RREO that are similar to section 39 of LCO. We will consider necessary amendments to the provisions regarding disqualification from holding office with reference to the way forward for the disqualification from standing for election."

The Panel's discussion at the meeting on 21 July 2014 did not touch on paragraph 4.12 of the Consultation Paper. The specific provisions in the District Councils Ordinance (Cap. 547)/the Rural Representative Election

¹ The public consultation exercise commenced on 21 July 2014 and ended on 30 September 2014.

Ordinance (Cap. 576) that govern the disqualification of a DC member/a Rural Representative from holding office are attached in **Appendix I** for members' reference.

3. To recapitulate, it is proposed in the Consultation Paper that an appellant who is convicted of certain specified offences² or sentenced to imprisonment but is not serving a sentence of imprisonment (e.g. persons released on bail pending appeal, persons on suspended sentence, persons on early release under supervision or persons who have completed their sentences), or a person who is released under supervision³, would not be disqualified from being nominated as a candidate at a LegCo election and from being elected as a LegCo Member.

Council Business Division 2
Legislative Council Secretariat
16 October 2014

² Including offences as stipulated in sections 39(1)(c), (e)(ii), (e)(iii) and (e)(iv) of the Legislative Council Ordinance. Please see **Appendix II**.

³ Pursuant to section 7(1) or (2) of the Prisoners (Release under Supervision) Ordinance (Cap. 325), section 6(1) of the Post-Release Supervision of Prisoners Ordinance (Cap. 475), section 15(1)(c) of the Long-term Prison Sentences Review Ordinance (Cap. 524), section 5(1) of the Training Centres Ordinance (Cap. 280), section 5(1) of the Detention Centres Ordinance (Cap. 239), section 5 of the Drug Addiction Treatment Centres Ordinance (Cap. 244) and section 6(1) of the Rehabilitation Centres Ordinance (Cap. 567).

Appendix I**Contents of Section**

Chapter:	547 	Title:	District Councils Ordinance	Gazette Number:	33 of 2002
Section:	24	Heading:	Disqualification of elected members	Version Date:	27/12/2002

(1) An elected member is disqualified from holding office if the member-

- (a) becomes-
 - (i) a judicial officer; or
 - (ii) a prescribed public officer; or
- (b) has, in Hong Kong, or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon; or
- (c) has been convicted of treason; or
- (d) without limiting paragraph (b), after being elected, is convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
 - (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong; or
- (f) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 33 of 2002 s. 8)

(2) Subsection (1)(d) does not prevent a person from being eligible to be a candidate at an election to be held 5 years after the disqualification.

(3) An elected member is also disqualified from holding office if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 8)

(4) Subsection (3) does not prevent a person from being eligible to be a candidate at an election if subsequently it is found under the Mental Health Ordinance (Cap 136) that the person has become capable of managing and administering his or her property and affairs. (Amended 33 of 2002 s. 8)


(5) Subject to subsection (7), an elected member is also disqualified from holding office for the remainder of that member's term of office if the member does not attend meetings of the District Council for 4 consecutive months ("disqualifying period") without obtaining the consent of the Council before the end of that period.

(6) The disqualifying period under subsection (5) begins on the day next following the date of the meeting of the Council at which the member is first absent without consent.

(7) If during the disqualifying period no meetings are held or only one meeting is held, that period is extended to end immediately after the 3rd consecutive meeting from which the member is absent.

(8) An elected member is also disqualified from holding office if the person was not eligible to be nominated as a candidate under section 20.

Contents of Section

Chapter:	576 	Title:	Rural Representative Election Ordinance	Gazette Number:	E.R. 3 of 2014
Section:	9	Heading:	When a Rural Representative is disqualified from holding office*	Version Date:	18/09/2014

Remarks:

According to section 1 of the Rural Representative Election Legislation (Amendment) Ordinance 2014 (5 of 2014) ("the Amendment Ordinance"), the commencement provisions of the Amendment Ordinance are as follows-

- (a) for all purposes relating to the elections of Resident Representatives, Indigenous Inhabitant Representatives and Kaifong Representatives in 2015—the Amendment Ordinance comes into operation on 4 April 2014; and
- (b) in so far as it has not come into operation under paragraph (a)—the Amendment Ordinance comes into operation on 1 April 2015.

(1) A person elected as a Rural Representative is disqualified from holding office if the person- (Amended 5 of 2014 s. 2)

- (a) is a judicial officer;
- (b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not-
 - (i) served the sentence or undergone such other punishment as a competent authority may have substituted for the sentence; or
 - (ii) received a free pardon;
- (c) has been convicted of treason;
- (d) without limiting paragraph (b), after being elected, is convicted-
 - (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine;
 - (ii) of having engaged in corrupt or illegal conduct;
 - (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
 - (iv) of any offence prescribed by the EAC Regulations;
- (e) is a representative or a salaried functionary of the government of a place outside Hong Kong;
- (f) is a member of any national, regional or municipal legislature, assembly or council of a place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national level or local level; or
- (g) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full.

(2) Subsection (1)(d) does not prevent a person from being eligible to be nominated as a candidate at an election to be held after the expiration of 5 years after the date of the person's disqualification.

(3) A person elected as a Rural Representative is disqualified from holding office if the person is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental

incapacity, of managing and administering his property and affairs, but a person disqualified under this subsection is eligible to be nominated as a candidate at an election if it is subsequently found under that Ordinance that the person has become capable of managing and administering his property and affairs. (Amended 5 of 2014 s. 2)

(4) A person elected as a Rural Representative for a Rural Area is disqualified from holding office if the person was not eligible to be nominated as a candidate at an election for the Rural Area under section 22. (Amended 5 of 2014 s. 2)

(5) A person elected as a Resident Representative for an Existing Village is disqualified from holding office if, at any time after the election, the person ceases to be a resident of the Village.


(6) A person elected as a Kaifong Representative for a Market Town is disqualified from holding office if, at any time after the election, the person ceases to be a resident of the Market Town. (Added 5 of 2014 s. 7)

Note:

*** (Amended 5 of 2014 s. 2)**

Appendix II

Contents of Section

Chapter:	542 	Title:	Legislative Council Ordinance	Gazette Number:	2 of 2011; 12 of 2012; G.N. 5176 of 2012
Section:	39	Heading:	When person is disqualified from being nominated as a candidate and from being elected as a Member	Version Date:	01/10/2012

(1) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Member, if the person-

(a) is-

- (i) a judicial officer; or
- (ii) a prescribed public officer; or
- (iii) an officer of the Legislative Council or a member of staff of The Legislative Council Commission; or (Amended 48 of 1999 s. 24)

(b) has, in Hong Kong or any other place, been sentenced to death or imprisonment (by whatever name called) and has not either-

- (i) served the sentence or undergone such other punishment as a competent authority may have been substituted for the sentence; or
- (ii) received a free pardon; or

(c) has been convicted of treason; or

(d) on the date of nomination, or of the election, is serving a sentence of imprisonment; or

(e) without limiting paragraph (b), where the election is to be held or is held within 5 years after the date of the person's conviction, is or has been convicted-

- (i) in Hong Kong or any other place, of an offence for which the person has been sentenced to imprisonment, whether suspended or not, for a term exceeding 3 months without the option of a fine; or
- (ii) of having engaged in corrupt or illegal conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554); or
- (iii) of an offence against Part II of the Prevention of Bribery Ordinance (Cap 201); or
- (iv) of any offence prescribed by regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or (Replaced 10 of 2000 s. 47)

(f) is-

- (i) ineligible to be a candidate, or to be elected as a Member, at the election; or
- (ii) disqualified from being a candidate, or from being elected as a Member, at the election, because of the operation of this or any other law; or

(g) is a representative or salaried functionary of a government of a place outside Hong Kong; or

(h) is a member of any national, regional or municipal legislature, assembly or council of any place outside Hong Kong, other than a people's congress or people's consultative body of the People's Republic of China, whether established at the national or local level; or

(i) is an undischarged bankrupt or, within the previous 5 years, has either obtained a discharge in bankruptcy or has entered into a voluntary arrangement within the meaning of the Bankruptcy Ordinance (Cap 6) with the person's creditors, in either case without paying the creditors in full. (Amended 25 of 2003 s. 22)

(2) A person is also disqualified from being nominated as a candidate at an election if the person

has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)

(2A) A person is also disqualified from being nominated as a candidate at a by-election if—

(a) within the 6 months ending on the date of the by-election—

(i) the person's resignation under section 14 as a Member took effect; or

(ii) the person was taken under section 13(3) to have resigned from office as a Member; and

(b) no general election was held after the relevant notice of resignation or notice of non-acceptance took effect. (Added 12 of 2012 s. 3)

(3) A person is also disqualified from being elected as a Member if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under that Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs. (Replaced 25 of 2003 s. 22)

(4) A person is also disqualified from being elected as a Member for a functional constituency (other than the District Council (first) functional constituency and the District Council (second) functional constituency) if, since the close of nominations, the person has ceased to have a substantial connection with the constituency. (Amended 2 of 2011 s. 17)

(5) In this section-

judicial officer (司法人員) means the holder of a judicial office, as defined in section 2 of the Public Service Commission Ordinance (Cap 93);

prescribed public officer (訂明的公職人員) means any of the following-

(a) the Chairman of the Public Service Commission;

(b) the Commissioner and Deputy Commissioner of the Independent Commission Against Corruption and the holder of any other office under the Independent Commission Against Corruption Ordinance (Cap 204);

(c) The Ombudsman and the holder of any appointment under section 6 of The Ombudsman Ordinance (Cap 397);

(d) a member of the Electoral Affairs Commission;

(e) the chief executive of the Monetary Authority and any member of the senior management of that Authority, including divisional heads, executive directors, managers and counsel employed by that Authority;

(ea) the Privacy Commissioner for Personal Data and any person employed or engaged by him or her under the Personal Data (Privacy) Ordinance (Cap 486); (Added 48 of 1999 s. 24)

(eb) the Chairperson of the Equal Opportunities Commission and any person employed or whose services are engaged by the Commission under the Sex Discrimination Ordinance (Cap 480); (Added 48 of 1999 s. 24)

(f) any person holding an office, whether permanent or temporary, in a Government department or bureau and employed in the department or bureau.