

立法會
Legislative Council

Ref : CB2/BC/6/17

LC Paper No. CB(2)688/18-19
(These minutes have been seen
by the Administration)

Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018

Minutes of the third meeting
held on Monday, 3 December 2018, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex

Members present : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Hon LUK Chung-hung, JP
Hon AU Nok-hin

Members absent : Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP
Hon CHU Hoi-dick

Public Officers attending : Mr Andy CHAN Shui-fu, JP
Under Secretary for Constitutional and Mainland Affairs

Ms Cherie YEUNG Lok-sze
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr Ryan CHIU Pit-ming
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr MOK Mong-chan
Assistant Secretary for Constitutional and Mainland Affairs

Ms Rachel YIU Mung-hin
Senior Administrative Officer
Home Affairs Department

Ms Carmen KAN Sau-fun
Principal Liaison Officer
Home Affairs Department

Mr WONG See-man
Chief Electoral Officer
Registration and Electoral Office

Mr Raymond WANG Man-chiu
Principal Electoral Officer
Registration and Electoral Office

Mr SHUM Nam-lung
Deputy Chief Electoral Officer (Voter Registration)
Registration and Electoral Office

Miss Emma WONG
Senior Assistant Law Draftsman (Acting)
Department of Justice

Mr Gary LI Ming-fung
Government Counsel
Department of Justice

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

Staff in : Ms Wendy KAN
attendance Assistant Legal Adviser 6

Ms Jasmine TAM
Senior Council Secretary (2) 3

Mrs Fonny TSANG
Legislative Assistant (2) 3

Action

I. Meeting with Administration

[LC Paper Nos. CB(2)71/18-19(01), CB(2)98/18-19(01) and CB(2)355/18-19(01)and(02)]

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

Clause-by-clause examination of the Bill

Legal
Adviser
to the Bills
Committee

2. The Bills Committee completed clause-by-clause examination of the Chinese text of the Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill"). The Legal Adviser to the Bills Committee was requested to examine the English text of the Bill.

Proposed amendments to the Bill

Admin

3. Members noted that the Administration would propose amendments to the Bill. The Administration undertook to provide a full set of its draft amendments to the Bill for the Bills Committee's consideration at the next meeting. The Chairman invited members who intended to propose amendments to the Bill to forward them to the Clerk on or before 11 December 2018, so that the Administration could be invited to provide a written response to their proposed amendments before the next meeting.

Date of next meeting

4. Members agreed that the next meeting would be held on Wednesday, 19 December 2018, at 11:00 am.

II. Any other business

5. There being no other business, the meeting ended at 5:58 pm.

Council Business Division 2
Legislative Council Secretariat
23 January 2019

**Proceedings of the third meeting of the
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018
on Monday, 3 December 2018, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)/Discussion	Action required
000943 - 001148	Chairman	Opening remarks Members noted the Administration's written response to the issues raised at the last meeting (LC Paper No. CB(2)355/18-19(01)).	
001149 - 001303	Chairman Administration	Continuation of clause-by-clause examination of the Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill") Part 4 – Amendment to Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) Relating to Persons other than Candidates and Election Expense Agents Incurring Election Expenses for Publishing Election Advertisements on Internet <u>Examination of clause 30</u>	
001304 - 001855	Chairman Administration	Part 5 – Replacing Stamping Requirement for Certain Ballot Papers <u>Examination of clauses 31 to 44</u>	
001856 - 002317	Chairman Administration	Part 6 – Improving Counting Process <u>Examination of clauses 45 to 48</u>	
002318 - 004219	Chairman Mr AU Nok-hin Dr Helena WONG Administration	<u>Examination of clauses 49 to 57</u> <i>Clause 49</i> In relation to the proposed sections 81 (as amended by clauses 49 and 82 of the Bill) and 75(7)(a) (as amended by clause 81 of the Bill) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), Mr AU Nok-hin enquired about the criteria for determining whether a questionable ballot paper for a geographical constituency ("GC") should be forwarded to the Returning Officer ("RO") or to the Presiding Officer ("PRO") for a decision. The Administration explained that the counting of votes for GCs was conducted at individual counting stations after the close of poll. The count was conducted manually and during the count, questionable ballot papers would be separated for the subsequent determination of their validity by PROs. In case any questionable ballot papers concerned were GC ballot papers misplaced in functional constituency ballot boxes which would be delivered to the	

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		<p>Central Counting Station (“CCS”), those questionable ballot papers would be forwarded to the respective RO who should be staying in the CCS and was to decide whether the votes recorded on such ballot papers were to be counted.</p> <p><i>Clause 51</i></p> <p>In reply to Dr Helena WONG's enquiry, the Administration explained that pursuant to section 78(1)(f) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F), an unmarked ballot paper was not to be regarded as valid and was not to be counted for the purpose of determining the number of valid votes obtained by individual candidates. Nonetheless, according to the proposed section 78(2)(a) of Cap. 541F, a candidate, an election agent or a counting agent might inspect the unmarked ballot paper. Furthermore, PRO was required under the proposed section 79(6) of Cap. 541F to prepare a statement setting out, under specified heads (including the head "unmarked"), the ballot papers which were not to be counted. In response to Mr AU Nok-hin's enquiry, the Administration confirmed that a procedure was in place to verify whether the sum of the number of ballot papers counted and the number of ballot papers which were not to be counted as set out in the aforementioned statement prepared by PRO tallied with the total number of ballot papers issued.</p> <p><i>Clause 53</i></p> <p>In relation to the proposed section 56(1) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) (as amended by clause 53 of the Bill), Dr Helena WONG enquired whether a voter could use a dark-coloured (e.g. deep blue) pen instead of a black pen to mark the ballot paper.</p> <p>The Administration responded that the proposed amendments to section 56(1) and Form 1 of Schedule 2 to Cap. 541I sought to tally the provisions thereunder related to the marking of ballot papers, and that voters were provided with black pens to mark the ballot papers at polling stations. Pursuant to the proposed section 74A(a)(ii) of Cap. 541I, a ballot paper on which the voter's choices appeared to be not marked in black was questionable and must be forwarded to RO to decide whether the vote was to be counted under the proposed section 78 of Cap. 541I.</p> <p><i>Clause 56</i></p> <p>Referring to the issue raised in paragraph 9 of the letter dated 16 October 2018 from the Assistant Legal Adviser (LC Paper No. CB(2)98/18-19(01)) ("ALA's letter"), the Administration advised that it would introduce amendments to Cap. 541I to reflect clearly the existing</p>	

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		arrangement that RO was to prepare a statement of ballot papers which were not to be regarded as valid under the proposed section 77 of Cap. 541I.	
004220 - 005211	Chairman Mr AU Nok-hin Administration	<p><u>Examination of clauses 58 to 62</u></p> <p><i>Clause 61</i></p> <p>Referring to the issue raised in paragraph 10 of ALA's letter, the Administration advised that it would introduce amendments to the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J) to reflect clearly the existing arrangement that RO was to prepare a statement of ballot papers which were not to be regarded as valid under the proposed section 50 of Cap. 541J.</p> <p><i>Clause 62</i></p> <p>In reply to Mr AU Nok-hin's enquiry, the Administration advised that a candidate, an election agent or a counting agent might copy what was recorded on a ballot paper account or a verification statement under the proposed section 52(3) Cap. 541J.</p>	
005212 - 005451	Chairman Administration	<p>Part 7 – Clarifying who may Instruct Director of Accounting Services to Return or Forfeit Election Deposits</p> <p><u>Examination of clauses 63 to 65</u></p> <p><i>Clause 65</i></p> <p>Referring to the issue raised in paragraph 15 of ALA's letter, the Administration advised that it would introduce an amendment to the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap. 569C) to clarify the meaning of "sub-subsector".</p>	
005452 - 005621	Chairman Administration	<p>Part 8 – Broadening Eligibility Criteria of Revising Officers</p> <p><u>Examination of clauses 66 to 68</u></p>	
005622 - 010647	Chairman Administration	<p>Part 9 – Minor Amendments</p> <p><u>Examination of clauses 69 to 84</u></p>	
010648 - 011453	Chairman Mr AU Nok-hin Administration	<p><i>Discussion on the proposal to specify in the law that it is the duty of the person lodging a claim or an objection to provide sufficient information relevant to the case</i></p> <p>Mr AU Nok-hin expressed concern about whether the objector was to bear the burden of proof under this proposal. If that was the case, he queried whether the proposal would be enforceable as it would be extremely difficult for objectors to conduct investigations and produce evidence.</p>	

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		<p>The Administration clarified that the objector was not required to bear the burden of proof. The reason for using the expression "provide sufficient information" in the legislative proposal was to state clearly that it was the duty of the claimant or the objector to provide sufficient information relevant to the case. The Revising Officer ("RevO") would make a ruling after considering the details of the case, the grounds advanced by the claimant/objector and relevant evidence. Moreover, in future objectors would be required to appear and explain at hearings why the persons being objected to were not qualified as electors, which would also facilitate RevO to understand the justifications for the objection. RevO would have the discretion to dismiss the objection if the objector did not attend the hearing. Given that voting right was a fundamental right, the Administration considered it justified to prescribe in the law that the objector had the responsibility to provide sufficient information for his/her objection in order to show that the objection was based on reasonable doubts and facts. The Administration also made reference to its paper (LC Paper No. CB(2)355/18-19(01)) on examples of what might be regarded as sufficient information under this proposal.</p>	
011454 - 012445	Chairman Dr Helena WONG Administration	<p>Dr Helena WONG's enquiry and the Administration's response regarding whether and how the Registration and Electoral Office would verify whether a person applying for registration as an elector was a member of any armed forces who should be disqualified from registration under the existing electoral legislation. The Chairman reminded Dr WONG that the issue raised fell outside the scope of the Bill.</p>	
012446 - 012747	Chairman Mr AU Nok-hin Administration	<p>In reply to Mr AU Nok-hin's enquiry about the proposal to introduce a targeted exemption from criminal liability in respect of a third party who published election advertisements ("EAs") on the Internet, the Administration explained that the proposed exemption would apply if the election expenses incurred by the third party (i.e. an individual or a body that was neither the relevant candidate whose election was being promoted or prejudiced nor his/her election expense agent) in publishing EAs were merely electricity and/or Internet access charges. One could not enjoy the proposed exemption if other election expenses were incurred.</p> <p>In response to Mr AU's further enquiry about whether a designer who designed a poster free of charge for a candidate would be eligible for the proposed exemption, the Administration advised that any service provided free of charge to a candidate by a person voluntarily and personally using the person's own time might constitute a voluntary service, while, for the candidate, any goods given incidental to the provision of voluntary service might constitute an election donation.</p>	

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012748 - 013000	Chairman	Proposed amendments to the Bill and date of next meeting Closing remarks	

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Legislative Council Secretariat
23 January 2019