

**立法會**  
***Legislative Council***

Ref : CB2/PL/CA

LC Paper No. CB(2)1418/19-20

(These minutes have been seen  
by the Administration)

**Panel on Constitutional Affairs**

**Minutes of meeting**  
**held on Monday, 18 May 2020, at 2:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon CHEUNG Kwok-kwan, JP(Chairman)  
Hon Kenneth LAU Ip-keung, BBS, MH, JP (Deputy Chairman)  
Hon Abraham SHEK Lai-him, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Steven HO Chun-yin, BBS  
Hon WU Chi-wai, MH  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Martin LIAO Cheung-kong, GBS, JP  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon Alvin YEUNG  
Hon Jimmy NG Wing-ka, BBS, JP

Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon Tanya CHAN  
Hon HUI Chi-fung  
Hon LUK Chung-hung, JP  
Dr Hon CHENG Chung-tai  
Hon Jeremy TAM Man-ho

**Member  
absent** : Hon James TO Kun-sun  
Hon CHAN Han-pan, BBS, JP  
Hon CHUNG Kwok-pan  
Hon CHU Hoi-dick  
Hon KWONG Chun-yu

**Public Officers : Item IV  
attending**

Equal Opportunities Commission

Mr Ricky CHU  
Chairperson

Dr Ferrick CHU  
Acting Chief Operations Officer

Ms Shana WONG  
Head, Corporate Communications

The Administration

Miss Rosanna LAW Shuk-pui, JP  
Deputy Secretary for Constitutional and Mainland Affairs

Item V

The Administration

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 Alan YUNG Ying-fai  
Chief Electoral Officer  
Registration and Electoral Office

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

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

**Staff in attendance** : Mr Bonny LOO  
Senior Assistant Legal Adviser 3(Acting)

Ms Jasmine TAM  
Senior Council Secretary (2) 3

Mr Dennis HO  
Council Secretary (2) 3

Mrs Fonny TSANG  
Legislative Assistant (2) 3

---

Action

**I. Confirmation of minutes of meeting**  
[LC Paper No. CB(2)978/19-20]

The minutes of the meeting held on 16 March 2020 were confirmed without amendments.

**II. Information paper(s) issued since the last meeting**  
[LC Paper Nos. CB(2)860/19-20(01), CB(2)882/19-20(01),  
CB(2)911/19-20(01) and CB(2)994/19-20(01)]

2. Members noted that the following papers had been issued after the last meeting:

Action

- (a) Administration's reply to the letter dated 19 March 2020 from Mr Dennis KWOK [LC Paper No. CB(2)860/19-20(01)];
- (b) letter dated 20 April 2020 from Dr Helena WONG [LC Paper No. CB(2)882/19-20(01)];
- (c) letter dated 28 April 2020 from Mrs Regina IP [LC Paper No. CB(2)911/19-20(01)] ; and
- (d) letter dated 14 May 2020 from Mrs Regina IP [LC Paper No. CB(2)994/19-20(01)].

3. Referring to the letters from Dr Helena WONG and Mrs Regina IP in paragraph 2(b) and (c) respectively concerning their requests for the Panel to discuss issues relating to Article 22 and Article 12 of the Basic Law, the Chairman said that as the Administration had proposed to discuss the item "Promotion of the Basic Law" at the next meeting, he suggested that the issues raised by Dr WONG and Mrs IP be discussed under the proposed item. No members raised objection. Dr Helena WONG requested that the Secretary for Justice be invited to join the discussion and answer relevant questions from members. The Chairman said that Dr WONG's request would be relayed to the Constitutional and Mainland Affairs Bureau ("CMAB") for consideration.

Clerk

4. With reference to the paper she wrote on the subject of "separation of powers" enclosed to her letter in paragraph 2(d), Mrs Regina IP said that there had been widespread misunderstanding about the application of "separation of powers" to Hong Kong. She hoped that arrangements could be made for the Panel to discuss the subject with the Administration at an opportune time. The Chairman responded that Mrs IP's letter and its enclosure would be forwarded to the Administration for reference and consideration.

Clerk

**III. Items for discussion at the next meeting**

[LC Paper Nos. CB(2)949/19-20(01) and (02)]

5. Members agreed to discuss the following items proposed by the Administration at the next meeting on 15 June 2020 at 2:30 pm:

- (a) promotion of the Basic Law; and

Action

- (b) progress of work in tackling discrimination on the grounds of sexual orientation and gender identity.

**IV. Briefing by the Chairperson of the Equal Opportunities Commission**

[LC Paper Nos. CB(2)949/19-20(03) and (04)]

6. At the invitation of the Chairman, the Chairperson of the Equal Opportunities Commission ("EOC") briefed members on the salient points of the paper submitted by EOC [LC Paper No. CB(2)949/19-20(03)].

7. Members noted a written submission from Hong Kong Unison Limited, which was tabled at the meeting.

*(Post-meeting note:* the above submission [LC Paper No. CB(2)1011/19-20(01)] and a further submission [LC Paper No. CB(2)1023/19-20(01)] from Hong Kong Unison Limited were issued to members on 19 May 2020.]

Discussion

*Enforcement and review of the provisions relating to sexual harassment under the Sex Discrimination Ordinance*

8. Dr Helena WONG expressed concern about recent incidents of male police officers having reportedly entered female toilets to make arrests. She was also deeply concerned about allegations that some female arrestees had been sexually harassed by police officers while they were detained in police stations, and that some women had experienced verbal sexual harassment while they were questioned by police officers in the street. She asked if the Anti-sexual Harassment Unit ("ASHU") to be set up by EOC would proactively examine whether the conduct of police officers in the course of carrying out police duties had contravened the provisions relating to sexual harassment under the Sex Discrimination Ordinance (Cap. 480) ("SDO"), and whether ASHU would serve as a first port of call for those claimed to have been sexually harassed by police officers.

9. The Chairperson of EOC said that ASHU would conduct a holistic review of the current legal protection regime against sexual harassment, identify gaps and recommend legislative amendments where appropriate. This apart, ASHU would promote public awareness of anti-sexual harassment policies and measures, as well as serve as a first port of call for

Action

those affected by sexual harassment. The Chairperson of EOC further said that EOC had received enquiries relating to acts of sexual violence or sexual harassment allegedly committed by police officers in 2019. Although EOC had issued a statement calling upon the person(s) aggrieved by relevant alleged acts to approach EOC for assistance, EOC had not received any complaint lodged by the aggrieved person(s) or his/her representative(s) so far. In reply to Dr WONG's further question, the Chairperson of EOC explained that in the absence of any complaint lodged by the aggrieved person(s) or his/her representative(s), EOC would be unable to establish a case for taking further follow-up action merely based on relevant media reports or information provided by third parties.

10. Mr LAM Cheuk-ting said he noted that EOC had issued a media statement commenting that the remarks made by him while discussing with a female Chief Superintendent of Police at a Finance Committee meeting were both inappropriate and unnecessary in the context of the discussion, and that such remarks could possibly violate the provisions relating to sexual harassment under SDO. While admitting that he was lacking in sensitivity when making the aforesaid remarks, Mr LAM expressed concern that EOC had indicated in another media statement that the remarks made by Dr Junius HO against Ms Claudia MO at a special House Committee meeting, albeit inappropriate, did not fall under the prescribed areas of SDO. Mr LAM considered that the contrasting views given by EOC on the aforementioned incidents had given rise to queries about whether EOC had adopted double standards and whether EOC had become a tool for political suppression. Dr KWOK Ka-ki also expressed similar concerns.

11. The Chairperson of EOC dismissed any allegation that EOC had engaged in political suppression. He stressed that EOC had all along applied the same set of standards in enforcing the anti-discrimination ordinances. With regard to cases allegedly involving discriminatory remarks, EOC would ascertain whether the remarks in question might amount to any unlawful act that fell within the remit of the anti-discriminatory ordinances and what follow-up action(s) EOC might take.

12. Mr LUK Chung-hung said that the Hong Kong Federation of Trade Unions was keen to promote understanding of the vicarious liability of employers for failure to prevent sexual harassment in the workplace. He enquired whether any legislative amendment proposal would be taken forward to enhance the provisions relating to vicarious liability for sexual harassment under SDO and what measures would be taken to enhance the

Action

awareness of prevention of sexual harassment in the workplace. The Chairperson of EOC acknowledged that there were gaps in protection against sexual harassment under the existing scope of SDO. He reiterated that ASHU would conduct a holistic review of the current legal protection regime against sexual harassment and recommend legislative amendments where appropriate.

*Expanding the scope of the existing anti-discrimination ordinances*

13. Mr LUK Chung-hung expressed concern that some local restaurants had, on the pretext of preventing the spread of coronavirus disease 2019 ("COVID-19"), refused to serve people who came from the Mainland or spoke Putonghua. He considered such practice clearly discriminatory against people from the Mainland and asked how EOC would follow up relevant cases. Echoing the concern raised by Mr LUK, Mr Holden CHOW urged EOC to consider whether legislative amendments would be necessary to curb relevant discriminatory acts which were currently not covered by the anti-discrimination ordinances.

14. The Chairperson of EOC said that in its submission to the Government on the Discrimination Law Review in 2016, EOC had recommended that the Government should conduct public consultation and introduce legal protection from discrimination on the grounds of nationality, citizenship and residency status under the Race Discrimination Ordinance (Cap. 602) ("RDO"). He further said that as compared with the situation in 2016, EOC observed that discrimination against Mainland visitors or new arrivals had become more prevalent now. EOC also noted that there had been suggestions that the issue of discrimination on the ground of residency status did not necessarily have to be addressed in the context of the existing four anti-discrimination ordinances. He said that as such, EOC would keep an open mind in studying possible legislative approaches for addressing the issue and would listen extensively to the views of stakeholders and the public before formulating the way forward. Dr CHENG Chung-tai questioned what other possible legislative options were in contemplation by EOC apart from introducing amendments to the existing anti-discrimination ordinances. The Chairperson of EOC replied that if it was deemed necessary to tackle discrimination on the ground of residency status by legislation and if the legislative approach recommended by EOC in 2016 was found not viable after study, EOC would examine what other legislative options might be pursued to tackle the issue.

Action

15. Ms Claudia MO expressed strong dissatisfaction that the Chairperson of EOC had remarked publicly that the refusal of some local restaurants to serve Putonghua-speaking customers might amount to indirect racial discrimination under RDO. She considered that such remark was in direct conflict with the explanation previously given by the Administration that RDO was meant to deal with discrimination on the ground of race, and that the definition of "race" under RDO was confined to a person's race, colour, descent, national or ethnic origin only. Dr Priscilla LEUNG recalled that according to the advice provided by EOC to an independent investigation conducted by the City University back in 2002, discrimination on the basis of language (including accent) might amount to indirect racial discrimination under RDO.

16. The Chairperson of EOC responded that he had already explained publicly, with examples, why refusal to provide services to people who came from the Mainland or spoke Putonghua could possibly contravene RDO. An example he had given was that if the owner of a local restaurant put up a notice indicating that the restaurant would provide services to non-Chinese people only, he/she could possibly contravene RDO even if he/she was of Chinese ethnicity himself/herself.

17. Mr LUK Chung-hung expressed concern that practitioners of certain occupations (e.g. police officers) and their family members had been subject to discrimination amid continuing political controversies in society. He asked whether legislative amendments would be necessary to tackle discrimination on the basis of occupation. The Chairperson of EOC said that while EOC was open-minded to the suggestion of introducing anti-discrimination legislation on the ground of occupation, other legislative approaches might also be explored in order to ensure that the issue would be tackled effectively. In this respect, EOC noted that there had been discussion in the Legislative Council ("LegCo") on the suggestion of enacting legislation to provide for the offence of insulting the Police.

18. Mrs Regina IP said that there were various types of discrimination in society (e.g. discrimination on grounds of residency status, accent, and political stance) other than those currently covered by the four anti-discrimination ordinances. In her view, these types of discrimination could and should also be tackled by legislative means. She queried why EOC had not submitted to the Government any legislative amendment proposals to expand the protected grounds of discrimination under the four anti-discrimination ordinances. The Chairperson of EOC responded that EOC had been carrying out research studies on various discrimination issues



Action

and would make submissions together with legislative amendment proposals to the Government as and when appropriate.

*Outlawing discrimination against sexual minorities*

19. Mr CHAN Chi-chuen expressed disappointment at the lack of progress in enacting legislation to prohibit discrimination against sexual minorities since the issue was raised more than 20 years ago. He criticized the Administration for failing to follow up the recommendations set out in the Report of the Study on Legislation against Discrimination on Grounds of Sexual Orientation, Gender Identity and Intersex Status ("the Study Report") published by EOC in 2016, and asked whether the incumbent Chairperson of EOC had discussed with the Secretary for Constitutional and Mainland Affairs ("SCMA") how those recommendations should be taken forward. Mr CHAN further said that the incumbent Chairperson of EOC had publicly pledged in May 2019 that EOC would work towards enacting legislation to prohibit discrimination against sexual minorities in the fields of employment, education, and access to public facilities and services, which, in EOC's view, were relatively less controversial. He enquired about the work undertaken by EOC in this regard.

20. The Chairperson of EOC said that he had discussed the work of EOC with both the former and the incumbent SCMA. He further said that the Study Report had recommended, among others, that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. He added that since 2019, EOC had been actively working along the direction cited by Mr CHAN and would press ahead with its work (including conducting relevant studies) in this regard. Mr CHAN Chi-chuen asked whether EOC would conduct the aforementioned public consultation if the Government failed to do so. The Chairperson of EOC explained that while EOC would continue to do its best to evaluate and make recommendations on the feasibility of enacting legislation to prohibit discrimination on the grounds of sexual orientation and gender identity, it was for the Government to decide whether relevant legislation should be introduced. As such, EOC was unable to provide a timetable for legislating against discrimination on such grounds.

21. Mr Holden CHOW and Dr Priscilla LEUNG said that while they agreed that people of different sexual orientations should not be subject to discrimination, they were seriously concerned that legislating against discrimination on the ground of sexual orientation might result in "reverse

Action

discrimination". Mr CHOW considered that discrimination on such ground should be tackled by public education rather than legislation. Dr LEUNG stressed that as the proposal of enacting legislation to prohibit discrimination on the ground of sexual orientation was highly controversial, EOC should gauge the views of different stakeholders other than sexual minority groups in the course of mapping out the way forward. The Chairperson of EOC assured members that EOC would conduct further studies in this regard, and would listen to and take into account the views of different stakeholders in formulating relevant recommendations to be made to the Government.

*(The Chairman left the meeting at this juncture. The Deputy Chairman took the chair.)*

*Issues relating to ethnic minorities and persons with disabilities*

22. Ms Claudia MO expressed dissatisfaction that the figures relating to ethnic minorities ("EMs") in Hong Kong as stated in paragraph 38 of EOC's paper were presented in a way that seemed to imply that foreign domestic helpers ("FDHs") were not officially regarded as forming part of the EM population in Hong Kong. The Chairperson of EOC clarified that the approach taken by EOC in presenting the said figures, i.e. providing the total number of EMs in Hong Kong with and without FDHs included, was meant only to set out clearly the latest statistics on EM population in Hong Kong. He stressed that there was no indication whatsoever in the above paper that EOC could pay no heed to discrimination faced by FDHs in Hong Kong.

23. Mr Dennis KWOK expressed strong regret at the remarks made by the Chairperson of EOC at a recent public event, which, in the view of many EM residents and organizations, were clearly offensive to EMs. He asked whether the Chairperson of EOC would apologize for having made such inappropriate remarks. The Chairperson of EOC responded that he would not apologize for having made the remarks mentioned by Mr KWOK as he was absolutely convinced that such remarks were not offensive to anyone in any way. He added that members might review the video recording of the event, which was available online, to gain a better idea of the context in which he had made the remarks.

24. Mr Dennis KWOK further said that after assuming office in April 2019, the incumbent Chairperson of EOC had undertaken to urge that Chinese/Cantonese classes for EM children be provided in community centres. He asked when relevant initiatives would be rolled out. The Chairperson of EOC said that although an implementation timetable

Action

was not available yet, he had been in discussion with the stakeholders concerned on relevant issues.

25. Dr KWOK Ka-ki expressed concern over a recent incident in which a hearing and speech-impaired patient who had not been provided with sign language interpretation service during his hospitalization jumped to his death on the day after he was discharged from hospital. Dr KWOK said that although it was clear that the hospital concerned might have contravened the Disability Discrimination Ordinance (Cap. 487) ("DDO"), the Hospital Authority had not actively followed up the relevant complaint lodged by the patient's family members. He further said that the patient's family members had also tried to lodge a complaint with EOC but were turned away by EOC's staff. He requested the Chairperson of EOC to look into the matter. The Chairperson of EOC said that he did not have in hand information on whether any complaint in respect of the aforementioned incident had been lodged with EOC. That said, he undertook that EOC would follow up the matter after the meeting.

*Complaints handling and provision of legal assistance*

26. Referring to a recent case in which some netizens had made cursing remarks against a police officer infected with COVID-19 and his family members, Dr Priscilla LEUNG said that the act of the netizens concerned might amount to disability vilification in contravention of DDO. She considered that EOC should have examined the issues involved instead of drawing a conclusion in haste that the remarks concerned did not constitute disability vilification or serious vilification under DDO.

27. The Chairperson of EOC clarified that the relevant media statement issued by EOC on 25 February 2020 only served to explain, upon enquiry, the applicability of the provisions relating to "disability vilification" under DDO. He stressed that the explanation by EOC should not be construed as comments or conclusions about individual complaints.

28. Dr Fernando CHEUNG said that although EOC claimed that it had since 2018 implemented a series of enhancement measures to improve its complaint-handling process, he was given to understand that among the complaint cases handled by EOC in 2018, the number of cases which were not investigated had increased by more than double. Furthermore, the number of cases successfully conciliated had dropped by 50% over the previous year. He questioned whether EOC could provide any evidence to

Action

prove that its complaint-handling process had indeed been improved since the implementation of the enhancement measures in 2018.

29. The Chairperson of EOC said that in response to public feedback about EOC's lengthy process of screening an enquiry and classifying it into a complaint, EOC had changed the basis for classifying a case as a complaint since 2018. He explained that before 2018, a case received by EOC would be classified as an enquiry and not as a complaint if it was resolved after initial investigation conducted by EOC. Since 2018, a case would be classified as a complaint right away if EOC was of the view that the case could possibly become a complaint that might warrant further investigation and/or conciliation. As a result, the number of cases recorded as enquiries had decreased whereas the number of cases classified as complaints had increased since 2018, following which there was a higher chance of cases which were not further investigated eventually, or whose investigations were subsequently discontinued.

30. Dr Fernando CHEUNG said that Prof Anselmo REYES, a retired High Court judge appointed by EOC to conduct an independent review concerning EOC's complaint-handling process, had recommended that the Legal and Complaints Committee ("LCC") of EOC should be cautious about refusing legal assistance for court proceedings merely because a case had less than a 50% chance of success. Dr CHEUNG further pointed out that in Prof REYES's view, LCC should consider granting legal assistance so long as a case had a 20%-30% chance of success. He asked whether EOC would implement the recommendation.

31. The Chairperson of EOC said that it was already the current practice of LCC to consider a range of factors, including but not limited to the likelihood of success in court, in deciding whether or not to grant legal assistance. He added that other important factors that would also be considered by LCC included whether the case could set an important legal precedent and whether the case could be effectively used to enhance public awareness and promote equal opportunities.

32. Dr Fernando CHEUNG pointed out that under the four existing anti-discrimination ordinances, with a view to helping an aggrieved person to decide whether to institute proceedings, and if he/she so decided, to formulate and present his/her case in the most effective manner, EOC might prescribe forms for EOC and/or the aggrieved person to put questions to the respondent and for the respondent to answer the questions. He and Mr Dennis KWOK queried why the aforesaid "question form" mechanism,

Action

EOC which in their view was very important and helpful to the aggrieved person, had not been brought into operation and requested EOC to provide a timetable for its implementation. Owing to the shortage of time, the Deputy Chairman requested EOC to provide a written response after the meeting.

*(Post-meeting note: the English and Chinese versions of the written response provided by EOC [LC Paper No. CB(2)1358/19-20(01)] were issued on 14 July and 15 July 2020 respectively.)*

**V. Practical arrangements and publicity for the 2020 Legislative Council General Election**

[LC Paper Nos. CB(2)949/19-20(05) and (06)]

33. With the aid of PowerPoint, the Under Secretary for Constitutional and Mainland Affairs ("USCMA") and 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. CB(2)949/19-20(05)].

*(Post-meeting note: the PowerPoint presentation materials were issued vide LC Paper No. CB(2)1010/19-20(01) on 18 May 2020.)*

*(The Chairman resumed the chair at this juncture.)*

Discussion

*Polling date*

34. Mr CHAN Chi-chuen questioned why the polling date of the 2020 LegCo General Election had yet to be gazetted. USCMA explained that although the situation of the COVID-19 pandemic had eased slightly, stepping up efforts to prevent and control the disease was still the top priority of the Government and the Hong Kong community. As such, the Administration needed to closely monitor the situation in assessing the impact of the pandemic on the LegCo election. That said, the Administration was proactively preparing for the LegCo election and REO tentatively used 6 September 2020 as the basis for its preparatory work for the polling date. In reply to Mr CHAN's further enquiry, USCMA said that it was not prescribed by law as to when the polling date for a LegCo general election should be gazetted. The Administration would determine the

Action

polling date of the 2020 LegCo General Election in accordance with the actual circumstances.

*(Post-meeting note:* Members were subsequently informed that according to the letter dated 10 June 2020 from the Secretary for Constitutional and Mainland Affairs (LC Paper No. CB(2)1184/19-20(01)), the Chief Executive ("CE") had specified 6 September 2020 as the date for holding the general election for the Seventh LegCo. On 31 July 2020, the Administration announced that amid the severe COVID-19 pandemic situation, CE in Council had decided to postpone the 2020 LegCo General Election for a year to 5 September 2021, in order to protect public safety and public health as well as ensure elections were conducted openly and fairly.)

*Recruitment of electoral staff*

35. Dr Helena WONG sought clarification on whether the civil servants being recruited to serve as electoral staff for the 2020 LegCo General Election included police officers. She was seriously concerned that as the Police were responsible for taking enforcement actions against corrupt and illegal conduct at elections, conflicts of interests would arise if police officers were appointed as electoral staff. She pointed out that according to a thematic study report recently published by the Independent Police Complaints Council, the findings of a public opinion survey indicated that the score of public trust in the Police was as low as 2.6 (on a scale of 0 to 10, with 0 denoting no trust at all) in October 2019.

36. USCMA said that REO had launched a recruitment exercise in April 2020 to recruit electoral staff for the 2020 LegCo General Election. In line with established practice, the electoral posts were open to serving civil servants from all bureaux and departments ("B/Ds"), including the Police. In view of the difficulties experienced in recruiting electoral staff in the 2019 District Council ("DC") Ordinary Election and the increased electorate size, REO was making arrangements for appointing, in addition to serving civil servants, retired civil servants from all B/Ds as electoral staff (especially those who had served as electoral staff before retirement). USCMA clarified that the Independent Commission Against Corruption ("ICAC"), not the Police, was the law enforcement agency of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). He added that the poll and the count of every public election were conducted in an open and transparent manner, under the scrutiny of candidates and their agents, the media and the public.

Action

37. Dr Fernando CHEUNG and Mr HUI Chi-fung expressed grave concern about recruiting police officers to serve as electoral staff. They considered that as the comments made by police officers and relevant associations, including the Junior Police Officers' Association, on various occasions had clearly shown that the Police were not politically neutral, appointing police officers as electoral staff would give rise to serious doubts about whether the fairness and integrity of the election could be upheld and might even result in conflicts on the polling day. Dr CHEUNG urged the Administration to seriously reconsider excluding police officers from the civil servants to be recruited as electoral staff for the 2020 LegCo General Election. Mr HUI also queried whether the arrangement of recruiting police officers as electoral staff was in conflict with the Police General Orders, which stipulated that police officers should at all times abstain from any activity which was likely to interfere with the impartial discharge of their duties, or which was likely to give rise to the impression amongst members of the public that it might so interfere.

38. USCMA explained that the Administration considered it unfair to exclude the staff members of any particular grade or rank from the civil servants to be recruited as electoral staff merely based on some unfounded accusations. He said that all along, it was not easy to recruit enough civil servants to serve as electoral staff and tremendous efforts were required in each recruitment exercise. To safeguard the fairness and impartiality of the election, all electoral staff were required to uphold political neutrality in carrying out the electoral duties. USCMA reiterated that public elections were conducted in an open and transparent manner. Any cases involving corrupt or illegal conduct at elections would be dealt with in accordance with the law.

39. CEO said that in the 2019 DC Ordinary Election, many civil servants had withdrawn their applications to serve as electoral staff out of safety concerns. CEO further said that while REO had not conducted a formal survey on the reasons for these withdrawals, some of the applicants concerned had, in response to REO's verbal enquiries, indicated that they were concerned about their personal safety in view of the prevailing social situation and the violent incidents that took place before the election. Through enormous efforts, REO eventually managed to recruit the required number of electoral staff (i.e. around 20 000) to work on the polling day.

40. CEO explained that as about 31 000 electoral staff, which was about 50% more than that recruited in the 2019 DC Ordinary Election, were

Action

Admin

required for the 2020 LegCo General Election, it was expected that it would be even more difficult to secure sufficient electoral staff this time round. CEO said that the application deadline for the current recruitment exercise had been extended from 28 April to 18 May 2020 due to insufficient applications. As at 18 May 2020, REO had only secured 70% of the required number of electoral staff. At the request of some members, USCMA undertook to provide after the meeting a breakdown by B/D of the number of civil servants appointed as electoral staff in the 2016 LegCo General Election and the 2019 DC Ordinary Election respectively.

*(Post-meeting note: the supplementary information provided by CMAB was issued vide LC Paper No. CB(2)1400/19-20(01) on 23 July 2020.)*

41. Dr Priscilla LEUNG said that due to overcrowding and disputes in some counting stations after the close of poll in the 2019 DC Ordinary Election, some candidates and their agents were unable to monitor the counting of votes or leave the counting station until in the following afternoon. She expressed support for recruiting serving and retired staff of the disciplined services as electoral staff, which in her view would help improve the crowd control and maintenance of order in polling and counting stations.

42. Ms Alice MAK expressed doubt as to whether 31 000 electoral staff was sufficient, given that more polling stations would be set up and a high voter turnout was expected in the 2020 LegCo General Election. She hoped that the Administration would use all possible means to recruit more civil servants to serve as electoral staff so that electors would not have to wait for a long time to vote on the polling day. She also considered it important for the Administration to take appropriate measures to ensure the personal safety of electoral staff. Ms MAK agreed to Mr Alvin YEUNG's suggestion that it was worthwhile to ascertain scientifically why some civil servants were unwilling to serve as electoral staff after the 2020 LegCo General Election. CEO explained that 31 000 was only the minimum number of electoral staff required for the 2020 LegCo General Election and that REO would seek to recruit as many electoral staff as practicable. In response to the suggestion raised by Mr YEUNG and Ms MAK, CEO said that REO would explore conducting a survey on the views of the applicants for key electoral posts in the 2019 DC Ordinary Election and the 2020 LegCo General Election on taking up electoral duties after the election.



Action

*Queuing and polling arrangements*

43. The Deputy Chairman said that due to high voter turnout, many electors, including elderly persons, had to wait for hours to cast their votes in the 2019 DC Ordinary Election. He asked whether and, if so, what specific measures would be implemented in the 2020 LegCo General Election to facilitate electors with special needs (e.g. elderly persons, pregnant women and persons with mobility difficulties) to vote.

44. USCMA said that the Administration had consulted the Panel in March 2020 on various matters, including the proposed arrangements to facilitate electors with special needs to vote, in the Proposed Guidelines on Election-related Activities in respect of the LegCo Election issued by the Electoral Affairs Commission ("EAC"). USCMA informed members that EAC had conducted public consultation on the Proposed Guidelines and was collating and analyzing the views received. EAC would take into account members' views as well as the views of the public in finalizing the Guidelines to be issued later.

45. Mr Steven HO expressed concern that on the polling day of the 2019 DC Ordinary Election, some electors queued up repeatedly outside the polling stations in a bid to deter other electors from casting their votes. He asked what measures the Administration would take to tackle this problem. Dr Priscilla LEUNG said she had also received complaints that some elderly electors had been deterred from voting for the candidates they supported, and that some young people had successfully applied for ballot papers in the name of other elderly electors and voted at the 2019 DC Ordinary Election. She urged the Administration to actively follow up the aforementioned cases and implement appropriate measures to prevent elderly electors from being deprived of their right to vote.

46. USCMA pointed out that under ECICO, it was an offence if a person obstructed or prevented another person from voting at an election by deception. It was also an offence if a person applied for a ballot paper in the name of another person or, having voted at an election, applied at the same election for a ballot paper in the person's own name. USCMA assured members that enforcement actions against corrupt and illegal conduct would be stepped up during the 2020 LegCo General Election. REO would handle relevant complaints seriously and would refer suspicious cases to ICAC for further investigation and follow-up.

Action

47. Mr Steven HO said that electors of certain functional constituencies ("FCs") were currently required under the relevant legislation to indicate their preferences for candidates by writing Arabic numerals and not by stamping in the circles opposite the names of the candidates of their choice on the ballot papers. He was concerned that there had been cases in the past elections where the electors concerned had mistakenly used the chop provided at the polling stations to mark the ballot papers because the polling staff had deliberately omitted to provide them with a pen to do so, thus resulting in a relatively high proportion of invalid ballot papers in the relevant FC elections. He asked what would be done to prevent recurrence of similar incidents in future elections. USCMA said that REO would strengthen its training to familiarize the polling staff with the stipulated electoral procedures and requirements.

48. Mrs Regina IP asked whether electors would be required to keep a distance of 1.5 metres between each other when queuing to vote on the polling day of the 2020 LegCo General Election if the COVID-19 pandemic had not ended by then. Pointing out that some organizations would provide transportation for electors to get to the polling stations, she asked whether a cap would be imposed on the number of persons that could be carried by each vehicle. CEO replied that requiring electors to keep a distance of 1.5 metres between each other in queuing was considered not practicable as it would render the queues unduly long. That said, electoral staff would remind electors in the queue to wear a mask and keep some distance from each other. CEO assured members that REO would continue to closely monitor the pandemic situation and draw up appropriate safety measures in consultation with the Centre for Health Protection so as to ensure electors' safety and prevent the spread of COVID-19.

49. Ms Alice MAK enquired about the voting arrangements for electors under compulsory quarantine at home or at designated quarantine facilities. She also asked whether electors showing signs of fever would be disallowed to enter the polling stations to vote. CEO said that the Government would closely monitor the development of the pandemic and explore whether special arrangements could be made for electors under compulsory quarantine to go out temporarily to cast their votes in a safe manner.

*Proposal of designating the day after the polling day as a school holiday*

50. Mr IP Kin-yuen considered that the proposal of designating the day after the polling day as a school holiday could enable more flexible use of the school premises at which polling stations were set up as it would obviate

Action

the need to return the premises in the early morning following the polling day. Mr IP said that as many schools were about to start drawing up the school calendar for the following school year, he hoped that the Administration would take a decision on the proposal as early as practicable. USCMA replied that to his understanding, the Education Bureau had initiated exchanges with relevant stakeholders (i.e. school management) on the proposal and the preliminary responses received were positive.

*(At 4:27 pm, the Chairman announced that he would extend the meeting by 15 minutes beyond the appointed ending time.)*

*Other issues*

51. Mr Charles MOK said that a number of practitioners in the information technology ("IT") industry had relayed to him their concerns that their applications for registration as electors of ITFC had yet to be approved by REO even though such applications had been submitted well before the relevant statutory deadlines. They were particularly worried whether the processing of their applications could be completed before the publication of the 2020 provisional register ("PR") on or before 1 June 2020. He enquired about the number of relevant applications which were still being processed by REO. Mr MOK further said that some applicants had also expressed concern that little time was allowed for submission of relevant documentary proofs for their applications. He asked how these applications would be dealt with if the required documentary proofs could not be submitted in time before the deadline specified by REO.

52. USCMA said that for the 2020 Voter Registration ("VR") cycle, the statutory deadline for new registration fell on 2 May 2020. REO was working full steam ahead to process the VR applications received before the deadline. CEO explained that in view of public concerns about the eligibility of electors of ITFC, REO had since the 2017 VR cycle adopted a new measure in processing each new VR application received for ITFC, whereby the relevant specified body of the applicant and/or the applicant himself/herself would be requested to provide proofs (such as documentary proofs of the applicant's relevant academic qualifications and/or work experience) to substantiate the applicant's eligibility for registration as an ITFC elector. In the event that an applicant failed to provide documentary proofs before the specified deadline, the Electoral Registration Officer would decide not to process further the relevant application and would notify the applicant of the decision concerned in writing according to the relevant legislation. CEO assured members that REO would process all

Action

new VR applications received before the statutory deadline of 2 May 2020 in accordance with the established procedures, and that the registration particulars of applicants who met the relevant eligibility requirements for VR would be included in the 2020 PR to be published by 1 June 2020. In reply to Mr MOK's further enquiry, CEO said that REO aimed to complete before 1 June 2020 the processing of the VR applications received in the 2020 VR cycle.

53. Dr Priscilla LEUNG expressed concern that some registered electors who had not been able to return to Hong Kong since the outbreak of COVID-19 might lose their voting right as they were not aware of REO's inquiry letters or the need to respond to such letters. She considered that REO should exercise discretion in handling relevant cases and should not revoke the registration status of the electors concerned simply because of their failure to respond during the inquiry process. USCMA explained that apart from sending inquiry letters by post, REO would also use mobile phone calls, short message service or electronic mail (if provided by the elector) to remind the electors concerned to respond to the inquiry letters before the statutory deadline. The names of those electors who failed to respond to REO during the inquiry process would be included in the omissions list to be published by 1 June 2020 in accordance with statutory procedures. REO would issue reminder letters by mail to these electors to remind them to confirm/update their residential addresses or lodge claims in accordance with the electoral laws for consideration and determination by the Revising Officer, if they wished to reinstate their registration status.

54. Mrs Regina IP said she noted that the Democratic Party had recently drawn up a list of persons who would be taking part in the "primary election" to be held by the pro-democracy camp for the 2020 LegCo General Election. She sought clarification on whether such persons would be regarded as "candidates" under the provisions relating to "election expenses" in ECICO. USCMA said that the definition of the term "candidate" under the electoral law was clear. As to whether a person taking part in a "primary election" was required to declare the expenses incurred in relation to that election, the question had to be determined in accordance with the relevant legislation and the specific facts and circumstances of the case. CEO added that all prospective candidates should be aware that any person who had publicly declared an intention to stand as a candidate at an election at any time before the close of nominations for the election was already within the meaning of "candidate" as defined under the electoral law. Whether the conduct of a person constituted "publicly declaring an intention to stand as a candidate" would depend on all the circumstances and factual evidence

Action

involving that person in the relevant course of events. In case of any disputes, a determination was to be made by the court.

Motion

55. The Chairman said that a motion had been proposed by Dr Fernando CHEUNG during the original appointed meeting time. The Chairman further said that as some members had indicated objection to further extend the meeting, the proposed motion would be dealt with at the next meeting. Members agreed.

*(Post-meeting note: the relevant proposed motion was attached to the agenda for the next regular meeting.)*

**VI. Any other business**

56. There being no other business, the meeting ended at 4:45 pm.

Council Business Division 2  
Legislative Council Secretariat  
6 August 2020