

## **LEGCO QUESTION NO. 9**

(Written Reply)

Asked by Hon Albert HO Date of meeting : 7 January 2009

Replied by : Secretary for  
Constitutional and  
Mainland Affairs

### Question

According to existing legislation, a permanent resident of Hong Kong holding an identity document and ordinarily residing in Hong Kong was eligible to be registered as an elector and to vote in the Legislative Council election held on 7 September last year only if he had reached 18 years of age on or before 25 July last year (which was also the statutory deadline for publishing the final register for last year). Persons who reached 18 years of age during the period from 26 July to the election day were therefore unable to exercise their voting right in the election. In this connection, will the Government inform this Council:

- (a) of the estimated number of aforesaid persons who were unable to exercise their voting right in last year's election;
- (b) whether the authorities will, in future, consider making other arrangements for persons under similar circumstances, so as to enable them to exercise their voting right; if not, of the reasons for that; and
- (c) whether it has assessed if the arrangement, which had rendered the above persons unable to exercise their voting right, has violated the provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383); if the assessment result is in the affirmative, of the remedial measures; if the assessment result is in the negative, the reasons for that?

## Reply

President,

Pursuant to the Legislative Council (“LegCo”) Ordinance, a person is eligible to be registered as an elector if he has reached the age of 18. The Ordinance stipulates that if a person’s eighteenth birthday falls on or before 25 July (for LegCo election year and non-election year) or 25 September (for District Council (“DC”) election year) next following the person’s application for registration, he is eligible to be registered as an elector. The above dates coincide with the statutory deadline for the publication of the Final Register (“FR”) in the respective years. A person is entitled to vote at elections held afterwards only if his name has been included in the FR.

Our reply to the three parts of the question is set out below respectively:

- (a) In accordance with relevant electoral legislation, the FR for 2008 was required to be published on or before 25 July 2008. Thus, only permanent residents who reached the age of 18 on 25 July 2008 or before were eligible to be registered and could vote during the general election of the fourth term Legislative Council. As for permanent residents who turned 18 during the period between 26 July 2008 and 7 September 2008, as these persons had not yet reached the age of 18 as at 25 July 2008, in accordance with the law, they were not eligible to be registered in the FR for 2008 as electors and had no right to vote under the legislation.
- (b) When stipulating the “cut-off date” for determining whether a person applying for voter registration has reached the age of 18, the electoral law makes reference to the deadline for the publication of the FR, instead of the deadline for voter registration (i.e. 16 May for LegCo election year and non-election year, and 16 July for DC election year). This arrangement can allow more people turning 18 during the year to meet the age qualification for voter registration and to vote at elections held after the publication of the FR for that year.

The Administration considers that the relevant provisions in the existing electoral law are appropriate. The central consideration is to provide certainty to electoral arrangements. The relevant factors include the following :

- (i) The electoral law provides that the date for holding LegCo general election or DC ordinary election is to be specified by the Chief Executive. Normally, LegCo general election is held in September and DC ordinary election is held in November. To allow time for candidates to canvass support from electors and for the printing and delivering of poll cards, there is a need for the existing law to stipulate the date by which the FR should be published to ascertain who are eligible to vote.
  - (ii) The poll may be postponed, in case there are occurrences prescribed by the law (e.g. typhoon or other climatic condition of a serious nature). As such, if we take the polling day of elections as the cut-off date, it will bring about greater uncertainty.
  - (iii) After the publication of an FR, persons whose names have been registered in it can vote at elections held thereafter. However, if we take the polling day of elections as the cut-off date, it will mean that the FR will have to carry the names of some who have yet to reach 18 for a certain period after its publication. In a LegCo election year, in case there is a need to conduct any DC by-election before the polling day of the LegCo general election, the FR may contain the names of some who have not reached 18 on the polling day of the by-election and thus cannot meet the age qualification to vote in any such by-election. This will give rise to confusion.
- (c) The arrangement in electoral law making provision for the registration as electors of persons who will reach their eighteenth birthday, with the deadline for publication of the FR as the cut-off date, is in compliance with the requirements of Article 26 of the Basic Law that permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law. The Registration and Electoral Office is acting in full compliance with electoral law when determining whether an applicant for registration as an elector meets the age qualification.