

Legislative Council Panel on Constitutional Affairs

Polling and Counting Arrangements for the 2004 Legislative Council Election

Introduction

This paper sets out –

- (a) the response of the Electoral Affairs Commission (EAC) to the comments put forth by Members at the last meeting on the proposed polling and vote counting arrangements for geographical constituencies (GCs) in the 2004 Legislative Council (LegCo) election; and
- (b) the EAC's proposed vote counting arrangements for functional constituencies (FCs) in the light of views expressed by Members following a demonstration session of the operation of optical mark reader (OMR) machines.

Background

2. At the meeting of the LegCo Panel on Constitutional Affairs held on 16 February 2004, Members had a preliminary discussion on the EAC's proposal to conduct vote counting for GCs at individual counting stations (Paper No.CB(2)1309/03-04(03)). Members put forth a number of questions and comments and requested that they be relayed to the EAC for further consideration. At the meeting, Members were also informed that the EAC was considering using OMR machines to count FC votes. A demonstration of the operation of OMR machines for Members took place on 25 February 2004.

Geographical Constituencies

3. On the EAC's proposal to decentralize counting of GC votes to individual counting stations, Members have raised concerns which are mainly related to two areas, namely, the consistency of standard adopted by Presiding Officers (PROs) in determining the validity of questionable

ballot papers, and the openness and transparency of the counting process.

Handling of Questionable Ballot Papers

Standard of Presiding Officers

4. It is estimated that over 500 counting stations will be designated at the coming LegCo election. Each station will be presided by a PRO. Members were concerned that it would be difficult to ensure a consistent standard among the 500 PROs regarding the handling of questionable ballot papers.

5. Decentralized counting arrangements were adopted for the first time in the 2003 District Council (DC) election. The EAC considers that on the whole, the performance of PROs in the handling of questionable ballot papers on that occasion was satisfactory. In this connection, Members may wish to note that, in respect of that election, 15 complaints and two election petitions have been lodged in relation to the determination of questionable ballot papers. The 17 cases concern the determination of questionable ballot papers in four constituencies, out of a total of some 400 constituencies.

6. For the 2004 LegCo election, to further enhance the standard of PROs in this regard, more intensive training will be provided for PROs. A greater variety of sample questionable ballot papers will be used in training and included in the PRO manual. As in the 2003 DC election, amendments will be introduced to the relevant legislation for the 2004 LegCo election so that clearly invalid ballot papers (for example, those not marked with the chop and blank ballot papers) will be treated as invalid. Thus, it is expected that the number of genuine questionable ballot papers which require PROs to determine validity will be reduced in the coming LegCo election as compared against that in the last LegCo election.

7. As in previous elections, PROs could seek legal advice on determining the validity of questionable ballot papers if necessary. A Government counsel will be stationed at each District Office to provide advice for the PROs in that district, and the counsel could visit the counting station to provide advice on the spot, if necessary. A team of Government counsel will also station at the central counting station to provide overall support.

Objection raised to the validity of Questionable Ballot Papers

8. In connection with the above issues, Members requested the Registration and Electoral Office (REO) to provide the number of questionable ballot papers to which candidates or their agents had raised objection in the 2003 DC election.

9. Under the law, a PRO's decision on whether to accept or reject a questionable ballot paper is final. If the decision of a PRO is objected to by a candidate or his agent, the relevant ballot paper will be endorsed with the words "acceptance objected to" or "rejection objected to", as the case may be. The ballot paper will then be sealed in a packet after the election, and can only be opened for inspection on an order made by a court in proceedings relating to an election petition or criminal proceedings. As PROs are only required to keep a record of the number of rejected ballot papers but not the number of questionable ballot papers which candidates or their agents have raised objection to, the REO is not able to provide the information requested by Members.

Use of Web Cameras

10. It was suggested at the last meeting that the EAC should explore the feasibility of using web cameras to capture the images of questionable ballot papers at counting stations, and transmit the images to computer screens at the central counting station for the respective ROs to determine the validity of these questionable ballot papers.

11. The EAC has considered the proposal and takes the view that the following concerns will need to be addressed if the proposal is to be further pursued. First, in the context of discussions on the use of OMR machines to determine questionable ballot papers in FC election, some Members have indicated a lack of confidence in making a determination based on electronic images (see paragraph 22(b) below). Secondly, the time taken to complete the process of determining questionable ballot papers will be lengthened if the proposal is implemented. It will take time to transmit the image of individual ballot papers. It will also take time for the ROs to make the determination one by one. Thirdly, considerable resources will be incurred for the provision of the necessary technical infrastructure and backup support at all counting stations and the central counting station.

12. Taking into account the above considerations and the experience of the 2003 DC election as elaborated in paragraph 5 above, the EAC is inclined to adopt the arrangement for questionable ballot papers to be dealt with by PROs at individual counting stations in the coming LegCo election.

Openness and Transparency of the Count

Conversion Process

13. Members have requested the EAC to consider how to ensure that the process of converting a polling station into a counting station will be conducted in a transparent manner. Specifically, it was suggested that the public be allowed to be present during the conversion process.

14. During the conversion process, the security of the ballot box is ensured by the locks under seal on the box, and the locks and seal will only be opened and broken when the count commences. Candidates and their agents will be allowed to be present during the conversion process. Thus, the EAC does not consider it necessary for members of the public to be present to monitor the process. The EAC is also concerned that the presence of the public may divert the polling staff's attention from their assigned duties relating to the conversion process. Another relevant consideration is that some polling stations are very small, making it practically difficult to accommodate the public whilst the conversion process is underway.

15. In this connection, questions have been raised on how the time taken for converting a polling station into a counting station might be shortened. There have been comments that in the 2003 DC election, it took more than an hour for some stations to complete the conversion.

16. Generally speaking, it will take less time to convert a polling station into a counting station if the venue is large enough for the polling staff to set up both the polling area and the counting zone prior to the polling day. More time will be required in smaller venues where polling staff can only start the conversion work after the close of poll.

17. It was observed that in the 2003 DC election, the counting process in some stations commenced later than the others because the PROs had spent considerable time in reconciling the statistics on voter turnout and the ballot paper account. One of the reasons for this was that

the PROs did not verify the statistics periodically, but only did so after the close of poll. In the coming LegCo election, the Deputy PROs will be designated to be responsible for the compilation and checking of statistics, so that the PROs can concentrate their efforts on supervising the conversion. The Deputy PROs will also be reminded to verify the statistics periodically.

Counting Process

18. Members have expressed concerns that candidates might find it difficult to identify and deploy a sufficient number of agents to monitor the counting process at each and every station within a GC.

19. According to the experience of past elections, candidates will usually deploy polling agents to monitor the polling process at polling stations. Candidates may consider appointing their polling agents to be counting agents to monitor the counting process as well. Further, as in the past, the counting process will be conducted in an open and transparent manner. Apart from the candidates themselves and their agents, members of the public and the media can also observe the entire counting process.

20. It was suggested by a Member that CCTVs be used to record the vote counting process to enhance its transparency. Considerable resources will be required for the provision of CCTVs and backup system at all counting stations and the central coordination centre. In view of the financial implications and the fact that candidates, their agents and supporters and other members of the public will be able to observe the entire vote counting process in any case, the EAC is inclined not to pursue the proposal.

Functional Constituencies

21. At the last meeting, Members noted that OMR machines were used to count ballot papers of the Election Committee (EC) and the EC Subsector in the 2000 LegCo election. Members were informed that the counting of the EC votes was delayed due to a human error in the design stage of the OMR machines, and that the contractor made a cash compensation to the Government for the error. Members requested that information on the amount of compensation be provided to the Panel. We can advise Members that the OMR contractor paid a sum of \$164,672 as compensation.

22. As undertaken at the last Panel meeting, a demonstration session was arranged for Members to see how the OMR machines could be used for the counting of FC ballot papers in the coming LegCo election. The session took place on 25 February 2004. Members expressed the following concerns at the session.

- (a) Some Members expressed doubt on the reliability of the system. They were concerned that some of the questionable or invalid ballot papers could escape the detection of the system. Members did not have the confidence that further calibration of the machines would completely remove the problem.
- (b) As questionable ballot papers will only be brought up as digital images for determination by the RO, candidates will not have the opportunity to inspect individual questionable or invalid ballot papers physically. Members considered that such an arrangement was not satisfactory.
- (c) The electronic recording of a candidate's objection to a decision taken by the RO on a ballot paper during the adjudication process was considered less reliable than the manual procedure of putting a stamp on the physical form of the questionable ballot paper to indicate the objection.
- (d) In case of a tie or in a situation where the margin of winning is very close for a particular constituency, the OMR machine could not enable a speedy recount of all the ballot papers for that constituency, as it is not designed to physically sort the ballot papers into different FCs. Members took the view that a recount done by the machines alone was not satisfactory, and that unless an efficient device was made available to sort the ballot papers physically so that the recount could be done manually, the proposal of using OMR machines to count FC ballot papers was considered unacceptable.
- (e) Unlike previous elections during which all ballot papers for a particular FC were delivered to the

relevant RO for counting, the ballot boxes from individual polling stations (each containing the ballot papers of different FCs) are to be opened and counted at any one of the 20 or so counting tables, each equipped with an OMR machine. Concerns were expressed as to whether or not independent candidates could deploy adequate manpower to serve as counting agents to monitor the counting process at each counting table.

23. The specific concern elaborated on paragraph 22(d) above may be addressed if a machine could sort the ballot papers into 28 FCs within a reasonable period of time. The REO has made informal enquiries with a number of potential vendors on the availability of such a machine. The vendors have advised that it is very difficult, if not impossible, to source the service of such a sorting machine in the market.

24. As regards the other concerns set out in paragraph 22 above, they are all essentially related to the question of confidence. The EAC takes the view that it is important that all parties concerned have full confidence in the integrity of the counting arrangements. In view of the reservations expressed by Members on the reliability of OMR machines, the EAC considers it undesirable to pursue further the proposal to use OMR machines to count FC votes in the 2004 LegCo election. It proposes that the manual counting process for FCs in the 2000 LegCo election should be adopted.

Advice Sought

25. Members are invited to express views on the content of this paper.

Registration and Electoral Office
11 March 2004