

Legislative Council Panel on Constitutional Affairs

Rules on Voting

INTRODUCTION

This paper addresses Members' concern over the recent spade of media interest on:

- a) the adequacy of existing legislation against the use of force or duress against electors with a view to influencing their voting behaviour; and
- b) the use of mobile telephones and the taking of photographs inside polling stations.

EXISTING PROVISIONS

2. The Government is committed to ensuring that all public elections in Hong Kong are conducted openly, honestly and fairly. In this regard, a comprehensive set of electoral law is in place to regulate the conduct of elections.

Using or Threatening to Use Force or Duress against Electors

3. Under section 13 of the Election (Corrupt and Illegal Conduct) Ordinance, Cap. 554, it is an offence if a person –

- (a) uses or threatens to use force or duress against another person to induce that person or to get him to induce a third person to vote or not to vote at an election; or to vote or not to vote for a particular candidate or particular candidates; or
- (b) uses or threatens to use force or duress against another person because the other person voted or refrained from voting at an election, or voted or refrained from voting for a particular candidate or particular candidates; or
- (c) authorizes another person, either expressly or by implication,

to engage in the above conduct.

4. Section 5 of the Ordinance stipulates that the Ordinance applies to all conduct concerning an election, whether the conduct is engaged in within Hong Kong or elsewhere.

5. Anyone who is subject to or is aware of, any of the illegal acts mentioned in paragraph 3 above should report them to the Independent Commission Against Corruption, which will investigate and follow up as appropriate. A person who commits the above offence is, if convicted, liable to a maximum fine of \$500,000 and imprisonment for seven years.

Use of Mobile Telephone and Taking of Photographs inside Polling Stations

6. Under section 45 of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (“the Regulation”), if on polling day within a polling station, a person –

(a) uses a mobile telephone, paging machine or any other device for electronic communication contrary to a direction of the Presiding Officer not to do so; or

(b) films or takes photographs or makes any audio or video recording without the express permission of the Presiding Officer, Returning Officer or a member of the Commission,

he commits an offence, and is liable upon conviction to a fine of \$5,000 and imprisonment for 3 months.

7. There have been suggestions that electors should be prohibited from carrying mobile telephones and cameras into polling stations. Alternatively, it has also been suggested that electors should be asked to deposit their mobile telephones or cameras with the polling staff before they enter the polling booths to fill in the ballot papers.

8. In considering the suggestions mentioned in paragraph 7 above, it is worth bearing in mind that Hong Kong has a long history and well established tradition of open, fair and honest elections. In the past elections,

the unauthorized use of communication or audio/video devices inside polling stations has never been a problem. Further, the operational implications of implementing the suggestions need to be considered carefully, including, whether electors will be unduely inconvenienced, and how polling staff should enforce the requirement (for example, whether they would be expected to check the belongings of voters, etc.).

9. We will, however, implement enhanced measures to remind electors to comply with the requirements set out in paragraph 6 above. More prominent signs will be displayed in the polling stations to remind the electors of the relevant requirements.

Advice Sought

10. Members are invited to express views on the above.

Registration and Electoral Office
15 May 2004

LL0076