

## **Legislative Council Panel on Constitutional Affairs**

### **Electoral Affairs Commission Interim Report on the 2004 Legislative Council Election**

#### **INTRODUCTION**

The Electoral Affairs Commission (EAC) published the Interim Report on the 2004 Legislative Council (LegCo) Election on 10 November 2004. This paper informs Members of the findings of the Interim Report.

#### **BACKGROUND**

2. The third term LegCo Election was held on 12 September 2004. Section 8 of the Electoral Affairs Commission Ordinance (Cap. 541) requires, inter alia, that the EAC shall make a report to the Chief Executive, within three months after the election, on matters relating to that election in respect of which the Commission has any function under Cap. 541 or any other Ordinance. Thus, the EAC should submit a report on the 2004 LegCo election to the Chief Executive by 12 December 2004. In view of public concern on the various problems regarding the practical arrangements of the 2004 LegCo election, the EAC submitted an interim report to the Chief Executive on 8 November 2004 to give an account of the progress of investigation carried out by the EAC and the findings so far in respect of the following major areas of complaints-

- (a) insufficient supply of ballot boxes and the propriety of the various contingency measures adopted (i.e. the opening of sealed ballot boxes to repack ballot papers and the use of cardboard boxes as ballot boxes) during the poll;

- (b) legality or otherwise of the contingency measures adopted;
- (c) ballot discrepancies in four functional constituencies;
- (d) voter turnout figures and delay in announcing election results; and
- (e) eviction or exclusion of candidates or their agents from polling stations.

Copies of the Interim Report have been sent to the Legislative Council Secretariat for distribution to Members.

## **MAJOR FINDINGS OF THE REPORT**

### ***Insufficient Supply of Ballot Boxes and Contingency Measures Adopted During the Poll***

#### Reasons for Insufficiency of Ballot Boxes (Paragraphs 2.1 to 2.8 of the Interim Report)

3. Having conducted two tests for the capacity of the new ballot boxes, the Registration and Electoral Office (REO) estimated that each ballot box could accommodate about 1,000 ballot papers. On this basis, the REO ordered 3,200 new ballot boxes. Given a registered electorate of about 3.2 million, the new ballot boxes could, theoretically speaking, accommodate a 100% voter turnout rate. However, it turned out that the capacity of the new ballot box was over-estimated. (Out of a total of 501 polling stations, only 37 did not request additional ballot boxes on polling day.) At a test conducted by the EAC after the election, using paper adopted for the actual ballot papers, it was found that shaking of the box was required after 315 papers had been inserted. With repeated shaking of the box subsequently, the capacity of the box was found to be about 690.

4. EAC's findings indicate that the following problems have led to the over-estimation of the capacity of ballot boxes and the insufficient supply of ballot boxes on polling day:

- (a) when the REO conducted the tests for the capacity of the ballot boxes, ordinary paper, instead of the thicker paper eventually adopted for the ballot paper, was used;
- (b) the original intention was that the ballot papers should be folded once and inserted into the ballot boxes. The REO did not envisage that the voters would, in practice, fold the ballot papers in many different ways before inserting them into the ballot boxes. Thus, the ballot papers inserted into the ballot box did not invariably pile up neatly as originally expected; and
- (c) the senior management of the REO were not personally involved in the tests for the capacity of the ballot boxes. The fact that papers of ordinary thickness were used in the tests had not been made known to them. Nor was the EAC informed of this when they were informed of the estimated capacity of the ballot boxes.

Replenishment of Supply (paragraphs 2.9 to 2.18 of the Interim Report)

5. Initially, 2,770 out of a total of 3,200 new ballot boxes were distributed to the 501 polling stations before polling day. The remaining 400 odd boxes were held in reserve in four depots in Quarry Bay, Kowloon Bay, Tuen Mun and Tai Po. As it happened, out of a total of 501 polling stations, 464 asked for additional ballot boxes on polling day. In many cases, the replenishments did not arrive in time. The EAC's major findings in respect of the replenishment of ballot box supply are as follows:

- (a) the REO Central Command Centre (CCC) first received requests from some polling stations for additional ballot boxes about an hour after the commencement of the poll. By around 11:30a.m., about 80 polling stations had

asked for additional ballot boxes;

- (b) the CCC started before 10:00a.m. to transport additional new ballot boxes from the four depots to polling stations which had requested additional ballot boxes. These four depots had a fleet of 43 five-seater vans/lorries to replenish supplies on the polling day. However, only four vans were immediately available for replenishing ballot boxes because the remaining ones had been deployed to deliver electoral equipment and ballot papers. In the afternoon, the full fleet of 43 vans could be deployed to deliver additional ballot boxes. This was supplemented by another four vans hired from the Government's contractor. The fleet made deliveries to a total of 180 polling stations;
- (c) the REO had also sought assistance from the Hong Kong Police Force. The Police made deliveries to some 450 polling stations; and
- (d) no special contingency plan had been drawn up before polling day to cater for the widespread shortage of ballot boxes. As a result, the REO was unable to cope with the numerous requests in a timely manner.

### Contingency Measures Adopted

*(i) Opening of Ballot Boxes* (paragraphs 2.19 to 2.22 and Appendix III of the Interim Report)

6. Due to the shortage of ballot boxes in a number of polling stations, the EAC gave a directive on polling day to all Presiding Officers (PROs) that, as a contingency measure pending the arrival of additional ballot boxes, they could open ballot boxes to repack the ballot papers cast so as to make room for more ballot papers. The EAC had made clear in its directive that if ballot boxes had to be opened, it should be done in the presence of candidates or their election/polling agents, or, in their absence, a police officer.

7. A total of 56 stations had opened a total of 210 ballot boxes for re-arrangement of ballot papers so as to make room for more ballot papers. All the ballot boxes were opened in the presence of either the candidates' election agents or polling agents, or in their absence, police officers. There is no evidence to indicate that any of the PROs had breached the condition imposed by the EAC in the opening of ballot boxes.

*(ii) Suspension of Operation* (paragraphs 2.24 to 2.29 of the Interim Report)

8. There were complaints that the PRO of the polling station at Sheung Wan Post Office had suspended the operation of the polling station while awaiting the supply of additional ballot boxes. The result of EAC's investigation revealed that the PRO concerned did not close the polling station. He merely asked electors to leave and return an hour later to cast their votes. For a few electors who told the PRO that they would not be free to return, they were allowed to cast their votes by pushing their ballot papers into the already full ballot boxes.

9. Under section 44(2) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D), the PRO may regulate the number of electors to be admitted to or exclude an elector from the polling station in order to ensure that polling takes place smoothly and efficiently. Given the circumstances of this case, the EAC considers it acceptable for the PRO to ask the electors to leave and return later in order to ensure the polling takes place smoothly.

10. The EAC found two similar cases, one in Tseung Kwan O and one in Shatin, in the course of the investigation. In both cases, the PROs did not ask the electors to leave but simply asked them to wait for the arrival of the new boxes. About five to ten electors in the polling station in Tsung Kwan O refused to wait and, according to the PRO's recollection, at least some of them chose to return later in the evening to cast their votes. The electors in the polling station in Shatin simply waited and cast their votes upon the arrival of the extra ballot boxes.

*(iii) Use of Cardboard Boxes as Ballot Boxes* (paragraphs 2.30 to 2.33 and Appendix III of the Interim Report)

11. There were two cases, one in Tseung Kwan O and one in Shatin, in which cardboard boxes were used as ballot boxes before the additional ballot boxes arrived at the polling stations. In the Tseung Kwan O case, two cardboard boxes were used with the agreement of the polling agents of three different geographical constituencies (GC) candidates' lists. The polling agents also witnessed the transfer of the cast ballot papers in the cardboard boxes to one of the extra ballot boxes when they arrived. In the Shatin case, one cardboard box was used. The entire process of the casting of ballot papers into that box was conducted in the presence of a polling agent and a police officer. They also witnessed the transfer of ballot papers from the cardboard box into one of the original ballot boxes after it was opened and the ballot papers inside it re-arranged to free up space.

12. The EAC considers that this stopgap measure, in the absence of any other immediate and better solution, was effective in ensuring that the polling process would not be disrupted. The adoption of the measure was done in good faith to ensure the completion of the election, and should not affect the integrity of the polling process.

Recommendations (paragraphs 2.40 to 2.44 of the Interim Report)

13. In the light of experience from this election, the EAC will thoroughly review the design of the ballot box and other electoral equipment. Any newly designed equipment will be thoroughly tested by various means, including real life trial use. The EAC also considers it necessary to review the system of communication between polling stations and the CCC, and the logistics and contingency measures in the supply of election materials and equipment. A special contingency plan to cater for unexpected scenarios should be drawn up. The EAC also recommends that consideration be given to deploying more senior staff to be in charge at the CCC so that emergencies could be more effectively handled.

***Legality of Contingency Measures Adopted*** (paragraphs 3.1 to 3.26 of the Interim Report)

14. There have been concerns that the EAC has no legal authority to adopt such contingency measures as opening ballot boxes to make room for more ballot papers. It has been suggested that the contingency measures are in breach of sections 47 and 48 of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation<sup>1</sup> and section 17(1)(e) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)<sup>2</sup>. The EAC takes the view that although electoral legislation contains provisions which prevent interference with or opening of the ballot boxes in use, there is no provision to cover unexpected emergencies. According to section 4(b) and 4(h) of the Electoral Affairs Commission Ordinance, the EAC is responsible for the conduct and supervision of elections, and to generally make arrangements, take such steps or do such other things as it considers appropriate for the purpose of ensuring that elections are conducted openly, honestly and fairly. Section 5(g) provides that the EAC may do such other incidental act or thing or exercise such powers as it considers necessary or expedient for the performance of its functions. The EAC therefore considers that it has the power and authority to make arrangements or take appropriate measures which are necessary or expedient for the performance of its functions for the conduct of the election.

15. Regarding the use of cardboard boxes as ballot boxes to cater for the emergency situation, the EAC is satisfied that the stopgap measure taken by the PRO, as the person in charge of polling station and entrusted with the power and authority to ensure that the polling process was not disrupted, is acceptable and not improper in the circumstances, insofar as he made sure that the electoral process was open, fair and honest.

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<sup>1</sup> Section 47 of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation provides that “a ballot box to be used for an election is to be so constructed that ballot papers can be introduced into it while it is locked .....”. Section 48(2) provides that “the Presiding Officer must place the ballot box ..... in the view of any other polling officers, and must keep it locked and sealed”.

<sup>2</sup> Section 17(1)(e) of the Elections (Corrupt and Illegal Conduct) Ordinance provides that “a person engages in corrupt conduct at an election if the person without lawful authority, destroys, removes, opens or otherwise interferes with a ballot box in use at the election”.

16. Further, the EAC considers that since the opening of the ballot boxes and the use of cardboard boxes as ballot boxes were done in the presence of polling staff, election agents, polling agents, or police officers and the electors inside the polling stations at the time, the principle of fair, honest and transparent election has not been compromised.

***Ballot Discrepancy in Four Functional Constituencies*** (paragraphs 4.1 to 4.9 of the Interim Report)

17. Some candidates from four functional constituencies (FCs), namely the Social Welfare FC, Labour FC, Accountancy FC and Health Services FC, complained that the number of ballot papers counted exceeded the number of voter turnout figures announced during the poll.

18. As explained by the EAC at a press conference on 15 September 2004, the hourly voter turnout figures announced during the poll were meant to be for reference by the media and the public only. The hourly voter turnout figures were reported to the CCC by each of the 501 polling stations through the Interactive Voice Response System (IVRS). As each polling station was required to calculate manually the voter turnout figures every hour and then report these figures through the IVRS, the EAC considers that the possibility of errors in the process cannot be ruled out. On the other hand, the number of ballot papers believed to be in the ballot boxes as recorded in the ballot paper account, which is compiled from the actual serial numbers on the counterfoils, can be taken as the basis for comparison. The REO has checked the ballot paper accounts of the four FCs prepared by polling staff after the end of poll, and found that the number of actual ballot papers counted was in fact slightly fewer than the number of ballot papers believed to be in ballot boxes<sup>3</sup> as recorded in the relevant accounts and returns. The EAC takes the view that this phenomenon is not irregular and should not give rise to concern. At the press conference on 15 September, the EAC announced the following sets of figures:

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<sup>3</sup> This latter number would include ballot papers which might have been taken away from the polling stations by individual voters.

**Table 1**

<b>Functional Constituency</b>	<b>Voter turnout figure (for provisional reference only)</b>	<b>Ballot paper account figure (total number of ballot papers believed to be in ballot boxes)</b>	<b>Number of ballot papers counted</b>
Social Welfare FC	8,475	8,539	8,538
Labour FC	469	458	455
Accountancy FC	12,269	12,324	12,323
Health Services FC	21,833	22,037	22,035

19. Upon subsequent enquiries from a candidate of the Accountancy FC on the methodology adopted for verifying the ballot discrepancies, the EAC has instructed the REO to re-check all relevant data, including voter turnout records, ballot paper accounts, and working papers for compiling these records and accounts. The REO found that recording and computation errors had been made which were not picked up when the figures in Table 1 above were announced on 15 September 2004. The verified and corrected figures are as below:

**Table 2**

<b>Functional Constituency</b>	<b>Voter turnout figure (for provisional reference only, as verified)</b>	<b>Ballot paper account figure (total number of ballot papers believed to be in ballot boxes, as verified)</b>	<b>Number of ballot papers counted</b>
Social Welfare FC	8,546	8,541	8,538
Labour FC	461	458	455
Accountancy FC	12,333	12,326	12,323
Health Services FC	22,050	22,036	22,035

20. The EAC takes the view that these small discrepancies do not affect the accuracy of the ballot papers counted at the counting stage. This is because the number of ballot papers counted was ascertained in the process of physical counting which was done in the presence of the candidates and their agents. The counted ballot papers were the most accurate and only basis of the election result.

Recommendation (paragraphs 4.13 to 4.17 of the Interim Report)

21. The EAC considers it necessary to design ways to improve on the accuracy of the hourly turnout figures, if possible, and that of the ballot paper accounts. The EAC also suggests that consideration will need to be given whether it is necessary to seek assistance from outside experts. Further, to avoid misunderstanding and too much reliance being placed on the hourly voter turnout figures published during the poll, the EAC proposes adding an express reminder in future elections that the figures are for provisional reference only.

***Voter Turnout Figures and Delay in Announcing Election Results***  
(paragraphs 4.10 to 4.12 of the Interim Report)

22. The compilation of the voter turnout figures was based on the hourly voter turnout rate reported by the 501 polling stations to the CCC through the IVRS. Due to the malfunctioning of the IVRS, some polling stations had encountered problems with reporting of voter turnout figures. As a result, it was necessary to conduct an overall verification of all voter turnout figures manually after the close of poll to ensure that all relevant data were correct before the election results were announced. Thus, the announcement was delayed. Preliminary findings indicate that there were shortfalls in the design of the system and deficiencies in testing and that the built-in contingency plan could not cope with the failure of the system on polling day. The EAC will look into the reasons for the failure of the IVRS in detail and set out the findings in the final report.

***Eviction or Exclusion of Candidates or their Agents from Polling Stations*** (paragraphs 5.1 to 5.21, Appendices V and VI of the Interim Report)

23. Electoral legislation and the Guidelines on Election-related Activities in respect of the LegCo elections ('the Guidelines') published by the EAC set out who may stay in a polling/counting station at the different stages of the polling and counting processes. Under section 63 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, candidates, election agents and ***counting agents*** may stay in the polling station while it is closed for the preparation for the counting of votes. On the other hand, a ***polling agent*** is allowed to stay in the polling station from shortly before the start of the poll until after the sealing of the flaps on the ballot boxes at the close of poll. He is not allowed to stay when the station is being converted into a counting station.

24. The EAC has so far received 15 complaints relating to the eviction or exclusion of candidates and their agents from 31 polling stations when the stations were being converted into counting stations. While the investigations of some of the cases are still continuing, the investigation findings so far reveal that, with the exception of four cases, where requests had been made by the agents to enter the polling stations after the close of poll, either the polling agents or the counting agents

were allowed to be admitted to the stations. For the four exceptional cases, detailed investigations findings are set out in Appendix VI of the Interim Report. Based on the investigation findings, the EAC has come to the view that there should not be any reasonable ground to suspect that the integrity of the polling and counting processes had been adversely affected. Nonetheless, the EAC has sent a letter of caution to each of the four PROs concerned, pointing out the mistakes they have made and disapproving what they have done.

25. There are a number of cases in which the PROs allowed the polling agents, instead of the counting agents, to stay when the polling stations were being converted into counting stations, contrary to the regulation as set out in paragraph 23 above. Investigation by the EAC reveals that most of these cases were caused by an ambiguity in wording in the Operational Manual for PROs published by the REO, resulting in misunderstanding on the part of the PROs.

Recommendation (paragraph 5.22 of the Interim Report)

26. The EAC considers it necessary for the REO to fully revamp the Operational Manual to make the contents fully compliant with the provisions of the electoral legislation and the Guidelines. The EAC also considers it necessary for the training programmes for PROs and polling officials to be strengthened, so that they will have a fuller understanding of the electoral legislation and the Guidelines.

*Use of Polling Stations by Disabled Persons* (paragraphs 6.1 to 6.17 of the Interim Report)

27. The EAC has received two complaints on the use of polling stations by disabled persons, both of which relate to the polling station at St. Stephen's Girls' Primary School. The EAC has investigated into the complaints and concludes that the complaints are not justified.

***Way Forward***

28. The EAC has proposed a number of measures to improve the arrangements for future elections. The main recommendations are set out below:

- (a) The design of the ballot box and other electoral equipment will be thoroughly reviewed. Any newly designed equipment will be thoroughly tested by various means, including real life trial use. Consideration should be given to tightening the supervision and line management within the REO.
- (b) The system of communication between polling stations and the CCC, and the logistics and contingency measures in the supply of election materials and equipment should be reviewed. A special contingency plan to cater for unexpected scenarios should be drawn up.
- (c) Consideration should be given to deploying more senior staff to be in charge at the CCC so that emergencies could be more effectively handled.
- (d) The criteria in selection of polling stations should be reviewed to ensure that suitable venues are selected to sufficiently accommodate large number of electors in case of a high turnout.
- (e) It is necessary to design ways to improve on the accuracy of the hourly voter turnout figures, if possible, and that of the ballot paper accounts. Consideration will need to be given whether it is necessary to seek assistance from outside experts.
- (f) To avoid misunderstanding and too much reliance being placed on the hourly voter turnout figures published during the poll, an express reminder should be added that the figures are for provisional reference only in future elections.
- (g) The REO should fully revamp the Operational Manual for PROs to make the content fully compliant with the provisions of the electoral legislation and the Guidelines.

- (h) Training programmes for PROs and polling officials need to be strengthened, so that they will have a fuller understanding of the electoral legislation and the Guidelines.

29. The EAC is continuing its investigation into the uncompleted complaint cases as well as other outstanding issues (including the malfunctioning of the IVRS). These will be dealt with in the final report to be submitted to the Chief Executive.

30. The EAC proposes that considerations be given as to whether it is necessary to seek assistance from outside experts to follow up on its findings and recommendations.

### ***Concluding Remarks***

31. Having considered the investigation findings, the EAC is satisfied that the integrity of the election has been upheld. However, the Report has revealed a number of administrative and planning errors relating to the practical arrangements for the election. The EAC takes the view that those who carried out the functions involved, including the Commission itself, must take responsibility for what happened. The EAC expresses deep regret for the problem and inadequacies relating to the conduct of the election and tenders its sincere apology for the inconvenience caused to the public, the electorate, the candidates and their agents.

Registration and Electoral Office  
10 November 2004