

Legislative Council Panel on Constitutional Affairs

Designated Display Spots for Candidates of the 2010 Legislative Council By-election

PURPOSE

This paper seeks Members' views on our review of the arrangement requiring incumbent Legislative Council ("LegCo") and District Council ("DC") members to remove the publicity materials at public display spots to make way for the designated display spots for candidates of the 2010 LegCo By-election to display their election advertisements.

BACKGROUND

Regulation of Public Display of Publicity Materials in Election Period

2. Under the current practice, before each LegCo general election and DC ordinary election, the Registration and Electoral Office ("REO") seeks the assistance of the relevant departments to revoke all approvals previously given to persons (including incumbent LegCo and DC members) and organisations to display publicity materials at Government land and premises, including roadside railings on Government land¹. The persons and organisations concerned are required to remove the publicity materials at their own costs before a deadline specified by the departments. Any publicity material remaining after the deadline will be removed by the Government with the costs of removal claimed back from the persons or organisations. In respect of by-elections, the above arrangement (hereafter referred to as the removal arrangement) applies in respect of all the publicity spots in the relevant constituency.

3. The removal arrangement serves the following purposes:
- (a) to ensure that all candidates can run on a level playing field by avoiding incumbent LegCo or DC Members from promoting

¹ The Lands Department manages the roadside banner spots. The Housing Department manages the banner spots and poster spots inside housing estates. The Leisure and Cultural Services Department also manages the display spots at its venues.

(directly or indirectly) their own candidacy or that of other members at the public display spots; and

- (b) to avoid the presence of other publicity materials which might cause confusion to the voters.

So far, the removal arrangement has been generally accepted by the community in past general/ordinary elections and by-elections.

2010 LegCo By-election

4. As a result of the resignation of a LegCo Member from each of the five geographical constituencies (“GC”), the Electoral Affairs Commission (“EAC”) will conduct a LegCo by-election to fill the vacancies. The By-election is scheduled for 16 May 2010, with the nomination period running from 22 March to 8 April 2010. In line with the arrangement in past elections, REO has sought the assistance of the relevant departments to notify the persons and organisations concerned in early March that the approval for them to display publicity materials at the public display spots would be revoked and that they were required to remove such materials before 15 March 2010. The relevant departments would remove any publicity materials remaining after 15 March 2010 with a view to clearing all materials before the commencement of nomination on 22 March 2010.

REVIEW OF THE ARRANGEMENT

5. Some LegCo Members and political parties have raised concern over the removal arrangement in respect of the upcoming LegCo By-election. They consider that the arrangement seriously affects the normal work of the incumbent LegCo and DC members. The removal and subsequent reinstatement of the publicity materials would also lead to a waste of resources.

6. In view of the concerns raised by LegCo Members and political parties, we see a need to review the existing arrangement. Pending the review, we have informed the incumbent LegCo and DC Members via the relevant departments that removal action in respect of display spots allocated to them will be suspended, and that we will advise them of the Administration’s decision on or before 26 March 2010. The removal action in respect of other display spots (i.e. those allocated to Government departments, DCs and its Committees and Subcommittees and non-governmental organisations (“NGOs”)) will continue to proceed

in order to ensure that adequate space will be available for publicity by the candidates.

Options for consideration

7. The following two possible options are for consideration:
 - (a) to maintain the status quo, i.e. to continue to require all persons and organisations, including incumbent LegCo and DC members, to remove their publicity materials displayed at the public display spots; or
 - (b) to allow the incumbent LegCo or DC members to keep the allocated public display spots during the 2010 LegCo By-election, with certain safeguards as set out in paragraph 17 below to ensure fairness of the By-election.

The adopted option will apply to future by-elections.

Policy objectives

8. In reviewing the regulation of public display spots during the By-election period, it is essential that we uphold the existing policy, i.e.:
 - (a) no candidate should have any unfair advantage; and
 - (b) there should be a clear message of the election during the By-election period.
9. In addition, the following policy objectives should be pursued:
 - (a) there should be adequate designated display spots for publicity by the candidates;
 - (b) the public display spots, as a limited public resource, should be utilised reasonably and in line with public interest; and
 - (c) interruptions and nuisance to normal service to the public should be minimized as far as possible.

Considerations

(A) Adequacy of designated display spots

10. For the 2008 LegCo General Election, about 17,100 banner spots were allocated to candidates running for the elections in the five GCs. On average, each of the 53 GC candidate lists was allocated about 320 banner spots.

11. The 2007 LegCo Hong Kong Island GC By-election was held on 2 December 2007, two weeks after the 2007 DC Ordinary Election which was held on 18 November 2007. Having regard to the competing interests of allowing adequate opportunities for publicity by candidates in each election, the majority of the banner spots were allocated to the 907 candidates standing for the DC Ordinary Election. A total of 1,695 banner spots were allocated to the eight candidates of the LegCo By-election (i.e. 212 spots per candidate).

12. If we adopt the option of allowing incumbent LegCo and DC Members to keep their public display spots, more than 10,000 spots (including spots already vacated from the five resigned LegCo Members, and those to be vacated from DCs and its Committees and Subcommittees and Government departments, as well as from NGOs) will be available for allocation to candidates of the 2010 LegCo By-election. There will be an average of more than 2,000 banner spots available for allocation to candidates in each of the five GCs. This number will be slightly higher than the total number of banner spots allocated to the candidates in the 2007 LegCo Hong Kong Island GC By-election.

(B) Utilization of public display spots and service to the public

13. As a public resource, the public display spots are limited. It is an important channel for regular communication between incumbent LegCo and DC members and their constituency. It is also a useful means through which the public is informed of the key messages promoted by Government departments and services provided by LegCo Members, DC members, DCs and its Committees and Subcommittees and NGOs.

14. During a LegCo general election or a DC ordinary election, there is a need for the public to be acquainted with the large number of

candidates involved². Given the regular nature of the LegCo general and DC ordinary elections, members concerned could plan and schedule their services and operations well in advance according to the election timetable. Therefore, the temporary suspension of the approval for them to display publicity materials at public display spots during the election period of general and ordinary elections would unlikely cause significant disruption to their normal operation. Besides, many of the normal services provided by incumbent members would be suspended to make way for electioneering activities during the election period. It would, therefore, be reasonable and appropriate to clear all public display spots to make way for the candidates' publicity.

15. On the other hand, vacancies are normally not foreseeable and may arise anytime. The number of candidates involved in a by-election is generally smaller than that in a general or ordinary election. In the 2007 LegCo Hong Kong Island GC By-election, there were only eight candidates. It is doubtful whether the allocation of all public display spots for promotion by the candidates is necessary and appropriate. Under the current arrangement, there will be no publicity other than those of the by-election at the display spots for more than two months. While it is important to ensure adequate publicity for the candidates, it would also be important to ensure that the public could continue to be informed about the services of the incumbent members, in particular those not participating in the by-election. For the upcoming by-election, the removal will affect the normal operation and service by the 55 incumbent LegCo Members and over 500 DC members. There are justifications for allowing incumbent members to continue to use the public display spots to serve the public during the By-election period.

(C) Level playing field

16. If we maintain the option of clearing all the public display spots, it would be more convenient in helping to ensure fairness in the election. Under the current arrangement, after all the spots are cleared, the Returning Officer will categorize the spots by their proximity and prominence and then distribute them equally into batches according to the number of candidates. Each batch will be made up of the same number of spots with the prominence of the spots in each batch similar to that of the other batches. These batches will be allocated to candidates by drawing lots. As such, no candidates will have any unfair advantage

² There were 907 candidates in the 2007 DC Ordinary Election. As for the 2008 LegCo General Election, 59 candidates were validly nominated for the functional constituency elections, while 142 candidates in 53 lists ran for the GC elections.

over the allocation of display spots. As all spots have been cleared, there will also be no problem of certain candidates benefiting from existing display spots allocated to him/her in another capacity, or through promotion at the display spots allocated to, for example, fellow party members who are incumbent LegCo/DC members.

17. If we go for the option of not clearing the display spots allocated to incumbent LegCo and DC members during election period for the upcoming By-election, we will need to address the following issues relating to fairness:

- (a) Diverse location and prominence of spots available for allocation

The display spots vacated by the resigned LegCo Members, DCs and its Committees and Subcommittees, Government departments and NGOs and those unallocated may come from very different locations and of varying degrees of prominence. Extra care would be required on the part of Returning Officers to categorise and distribute the spots in batches of equal prominence.

- (b) Display spots allocated to candidates in their capacity as DC member

It is possible that an incumbent DC member may stand for the By-election in the LegCo GC in which the DC is situated. To avoid the candidate concerned gaining an unfair advantage over other candidates, the total number of display spots allocated to such a candidate in his/her capacity as candidate and as incumbent DC member must be the same as that allocated to other candidates. To ensure fairness, one option is for us to require the candidate concerned to give up all the spots allocated to him/her as incumbent DC member.

- (c) Promotion of candidates at display spots allocated to incumbent LegCo and DC members

If the display spots of incumbent LegCo and DC members are not cleared during the period of the By-election, some may promote the candidacy of individual candidates through their allocated display spots. Under the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO), such publicity materials,

with the purpose of promoting or prejudicing the election of a candidate or candidates at the election, would be considered as election advertisements. The relevant requirements relating to election advertisements under the ECICO and the election guidelines issued by the Electoral Affairs Commission (EAC) would apply. For example, persons who incur expenses in producing the election advertisements would require prior appointment by the candidates concerned as election expense agents. Copies of the election advertisements would need to be deposited with the Returning Officers before display, and expenses of the election advertisement would count towards the election expenses and would need to be included in the election return.

To maintain fairness and minimize disputes, we should remind all LegCo and DC members concerned about the relevant provisions of the ECICO and election guidelines.

These safeguards will need to be worked out in more detail, if the option of allowing incumbent LegCo and DC members to keep their allocated display spots is adopted.

(D) Clear message of the By-election

18. The message of the By-election would be clear if all display spots are cleared. If incumbent LegCo and DC members are allowed to keep their public display spots, it is possible that some of the voters who see the publicity materials of an incumbent member may be confused as to whether the member is running for By-election. However, the potential problem should be manageable. This is evident in the 2007 DC Ordinary Election and the 2007 LegCo Hong Kong Island GC By-election, when there was an overlap of publicity period during which the banners for both elections were displayed at the same time in the Hong Kong Island GC.

Arrangements for future LegCo general and DC ordinary elections

19. Given the considerations in paragraph 14 above, we consider that the status quo should be maintained for future LegCo general and DC ordinary elections, i.e. to continue to require all persons and organisations, including incumbent LegCo and DC members, to remove their publicity materials displayed at the public display spots.

VIEWS SOUGHT

20. Members are invited to express views on the options on arrangements for dealing with publicity materials at public display spots during by-elections, as set out in paragraph 7 of this paper.

Constitutional and Mainland Affairs Bureau
March 2010