

立法會
Legislative Council

LC Paper No. CB(2)1652/10-11

Ref. : CB2/SS/5/10

**Paper for the House Committee meeting
on 6 May 2011**

**Report of the Subcommittee on Declaration of Constituencies
(District Councils) Order 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Declaration of Constituencies (District Councils) Order 2011 ("the Order").

Background

2. Under section 4(a) of the Electoral Affairs Commission Ordinance (Cap. 541) ("EACO"), one of the functions of EAC is to consider or review the boundaries of District Council constituency areas ("DCCAs") for the purpose of making recommendations on the delineation and the names of DCCAs for District Council ("DC") ordinary election.

3. Within the number of elected seats for each DC, EAC has the statutory authority to recommend the boundaries of corresponding DCCAs before each DC ordinary election. In demarcating the constituency boundaries, EAC must follow the criteria laid down in section 20(1) of EACO. Section 20(1) requires that the population of each DCCA should be as near the the population quota as practicable. The population quota means the total population of Hong Kong divided by the total number of elected members to be returned in the DC ordinary election (section 17(1)(b) of EACO).

4. The number of elected seats on each of the 18 DCs is stipulated in Schedule 3 to the District Councils Ordinance (Cap. 547) ("DCO"). After the approval of the Legislative Council ("LegCo") of the DCO (Amendment of Schedule 3) Order 2010 on 1 December 2010, the total number of elected DC members will be increased from 405 to 412 with effect from 1 January 2012. The Order came into operation on 3 December 2010 for the purpose of enabling arrangements to be made for the holding of the DC ordinary election in 2011.

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5. The Order is made by the Chief Executive ("CE") in Council under section 6(1) of DCO to declare the respective constituencies of the 18 Districts by delineating their areas and giving names to the constituencies.

6. LegCo passed a resolution on 14 April 2011 to extend the scrutiny period of the Order from 13 April to 18 May 2011. The Order will come into operation on 23 May 2011 for the purpose only of enabling arrangements to be made for the holding of the DC ordinary election in 2011, and in so far as it has not come into operation for the aforesaid purpose, come into operation on 1 January 2012 (i.e. the beginning of the fourth term of office of DCs).

The Subcommittee

7. At the House Committee meeting on 1 April 2011, Members agreed that a subcommittee should be formed to study the Order. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Mr IP Kwok-him, the Subcommittee has held a meeting with the Administration.

Deliberations of the Subcommittee

Timeframe for the delineation of DCCAs for DC ordinary election

8. In response to members' enquiry about the statutory timeframe for the delineation work, the Administration has informed the Subcommittee that EAC is required under EACO to submit a report to CE on its recommendations for DCCAs not more than 36 months from the preceding DC ordinary election. As the last DC ordinary election was held on 18 November 2007, EAC should have submitted its report and recommendations to CE by 17 November 2010. To allow EAC adequate time to formulate its proposals on delineation of DCCAs, CE has approved pursuant to section 18(4) of EACO the extension of the submission deadline to April 2011.

9. Members have expressed strong dissatisfaction at the delay in finalizing the delineation of DCCAs since it would affect the preparation work of incumbent DC members and prospective candidates who plan to stand for the upcoming DC ordinary election to be held in November 2011. They consider that the Administration should advance the timeframe for the delineation of DCCAs in the future.

10. The Administration has explained that the Administration had focused in the first half of 2010 on the methods for selecting CE and for forming LegCo in

2012, following which it has expedited its work and compressed the timeframe in relation to the allocation of new elected DC seats and the legislative work concerning the demarcation of constituency boundaries for the 2011 DC ordinary election. As compared with the timetables for the demarcation of the boundaries of DCCAs for the Second and Third Term DCs, the current timetable for the Fourth Term DCs is more or less the same. For the Second Term DCs, LegCo approved the increase in the number of elected DC seats in December 2002 and the relevant declaration of constituencies order was gazetted in May 2003. For the Third Term DCs, LegCo approved the increase in the number of elected seats in June 2006, and the relevant declaration of constituencies order was gazetted in December 2006. For the Fourth Term DCs, LegCo approved the increase in the number of elected seats in December 2010, and the Order was gazetted in March 2011. The Administration has also stressed that once the provisional recommendations on DCCA boundaries were published by EAC on 3 December 2010, prospective candidates should have an idea of the proposed delineation of DCCAs and can start their preparation work accordingly.

Statutory criteria for demarcation

11. Members note that EAC has adopted a set of criteria, as stipulated under section 20 of EACO, as the basis for making its recommendations. These criteria are:

- (a) the Commission shall ensure that the population in each proposed DCCA is as near the population quota as practicable;
- (b) where it is not practicable to comply with (a) in a proposed DCCA, the Commission shall ensure that the population in that DCCA does not exceed or fall short of the population quota by more than 25%;
- (c) the Commission shall have regard to community identities, preservation of local ties, and physical features of the area;
- (d) the Commission must follow the existing boundaries of the districts and the number of elected members to be returned to a DC as specified in Schedules 1 and 3 to DCO; and
- (e) the Commission may depart from strict application of (a) and (b) above only where it appears that one or more of the considerations in (c) above renders such a departure necessary or desirable.

12. Mr CHEUNG Hok-ming has observed that the difference in population among DCCAs can be as high as 8,641 within the $\pm 25\%$ deviation limits and the difference would be greater among those DCCAs which fall outside the $\pm 25\%$ deviation limits. He has enquired whether the Administration would consider increasing the number of constituencies in a district if the population in a DCCA exceeds the population quota by more than 25%.

13. The Administration has explained that in making recommendations on the delineation of DCCAs, EAC has to ensure compliance with the population quota requirement and the number of elected seats in each district as stipulated in DCO. In the circumstances that the population in a constituency exceeds the population quota by more than 25% and the number of elected seats in that district will be increased, EAC can make use of the new seat(s) to try to bring the population of the constituency concerned within the $\pm 25\%$ deviation limits. However, if there is no addition of seats in that district, EAC can only consider making adjustments to the boundary of that DCCA and those of adjacent DCCAs, taking into consideration the preservation of local ties, community identities and physical features of the areas, with a view to bringing the population of the constituency concerned within the $\pm 25\%$ deviation limits.

Transparency of the demarcation exercise

14. Members note that EAC has adopted a set of working principles for the demarcation exercise, which include the followings –

- (a) for existing DCCAs where the population falls within the $\pm 25\%$ deviation limits of 12,962 to 21,603, their boundaries would be maintained as far as possible;
- (b) for existing DCCAs where the population falls outside the $\pm 25\%$ deviation limits, but the situation was allowed for the 2007 ordinary election and the justifications remain valid, their boundaries would be maintained as far as possible;
- (c) for existing DCCAs other than those in (b) where the population falls outside the $\pm 25\%$ deviation limits, their boundaries and also those of adjacent DCCAs would be adjusted to comply with the population quota requirement, unless there are justifications for maintaining the boundaries on grounds of community identities, preservation of local ties and/or physical features. Where there is more than one way to adjust the boundaries of the DCCAs concerned, the one which affects the least number of existing DCCAs would be adopted, otherwise the one with the least departure from the population quota, would be used; and

- (d) factors with political implications would not be taken into consideration.

15. Members are of the view that EAC should adhere strictly to its working principles in making its recommendations on the delineation of DCCAs and should not take into consideration factors with political implications in order to be fair to all prospective candidates. Ms Emily LAU has, however, expressed concern whether it can be seen that factors with political implications have not been taken into consideration in the demarcation exercise. She notes with concern that before the provisional recommendations were made, EAC had invited District Officers ("DOs") to comment on its preliminary findings. Ms LAU considers that as the role of DOs has become increasingly political, they may have an undue influence on EAC in the delineation of DCCAs.

16. The Administration has advised that EAC has considered all the representations having regard to the relevant statutory criteria and the established working principles. All the written and oral representations received during the consultation period, with detailed justifications for accepting or rejecting the suggestions made therein, have been included in its Report on the Recommended Constituency Boundaries for the 2011 DC Election submitted to CE. The Administration has further explained that it is an established practice for EAC to invite DOs to comment on its preliminary findings before the provisional recommendations are made, as they are familiar with their districts and can provide EAC with information relating to the community identities and local ties of the district, public facilities shared among communities in the district and development of the relevant area etc. Such information would facilitate EAC in better understanding the local features and the environment of the areas concerned when drawing up the provisional recommendations and considering representations from the public. In making its recommendations, EAC has given considerations to the factors, such as community identities, preservation of local ties or physical features, in accordance with the relevant statutory criteria. EAC would only invite DOs to give comments on these factors as appropriate.

17. In response to Mr IP Kwok-him's enquiry as to how EAC had considered the views received in a fair and independent manner before making its final recommendations on the delineation of DCCAs, the Administration has explained that for representations regarding DCCAs which were provisionally determined to be the same as those of the DCCAs in 2007, modifications to their boundaries would be considered only if they were supported by cogent reasons and would result in substantial and notable improvement on community, geographical and development considerations; they would not in turn affect an

unacceptable number of unaltered DCCAs; and the resulting population of all the DCCAs affected would not exceed the $\pm 25\%$ deviation limits. Where the population of an unaltered DCCA was within the $\pm 25\%$ deviation limit, EAC considered it inappropriate to accept representations which proposed changes to the unaltered DCCA solely to bring the population closer to the population quota. If EAC were to accept such representations, many DCCAs would have to be re-delineated without the benefit of further public consultation as to their acceptability; therefore EAC would not accept such representations. For representations regarding new DCCAs, EAC would consider accepting those suggestions with sufficient cause on better population distribution or on community considerations. Members note that having regard to the representations received, EAC has adjusted its provisional recommendations in respect of the boundaries of 19 DCCAs and the names of two DCCAs.

18. Mr Alan LEONG is of the view that apart from the consideration of community identities and shared use of public facilities, EAC should also consider the close contacts and network already built up by DC members in their respective constituencies. Referring to the constituency of Tsui Ping North in Kwun Tong, he has pointed out that as the constituency would be dissolved according to the EAC's recommendations, an incumbent DC member who has served the area for almost eight years has to start building up network in a new constituency all over again. Mr LEONG considers that EAC should enhance the transparency of the demarcation exercise to dispel any suspicion of political consideration.

19. The Administration has explained that the population in the existing Tsui Ping North DCCA and Kwun Tong Central DCCA is less than 12,962 (i.e. falls short of the population quota by more than 25%), while there is a population growth in other DCCAs in the Kwun Tong district. Having considered various options, EAC has recommended merging these two DCCAs with the Tsui Ping South DCCA to form two constituencies so as to comply with the population quota requirement. This would also release one constituency to cater for other areas in Kwun Tong which have had significant population growth. The Administration has stressed that EAC has endeavoured to maintain the boundaries of existing DCCAs as far as possible and where adjustments have to be made, EAC would propose a change which would affect the least number of existing DCCAs. The current exercise has already entailed a high degree of transparency. Nonetheless, the Administration would relay Mr LEONG's view to EAC.

20. Some members including Mr WONG Yung-kan, Ms Starry LEE and Dr LAM Tai-fai are of the view that as the adjustments to the boundaries of existing DCCAs are made on the basis of the statutory criteria including the

population quota requirement, there should not be any political considerations as all political parties would unavoidably be affected in any adjustment. They have raised doubt about the appropriateness of Members' interference with the recommendations of EAC and consider that EAC should conduct the demarcation exercise independently.

Recommendation

21. The Subcommittee raises no objection to the Order and has not proposed any amendment.

Advice sought

22. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
5 May 2011

**Subcommittee on Declaration of Constituencies
(District Councils) Order 2011**

Membership list

Chairman	Hon IP Kwok-him, GBS, JP
Members	Hon CHEUNG Man-kwong Hon WONG Yung-kan, SBS, JP Hon Emily LAU Wai-hing, JP Hon CHEUNG Hok-ming, GBS, JP Hon Starry LEE Wai-king, JP Dr Hon LAM Tai-fai, BBS, JP Dr Hon Priscilla LEUNG Mei-fun Hon WONG Kwok-kin, BBS Hon Paul TSE Wai-chun Hon Alan LEONG Kah-kit, SC

Total: 11 Members

Clerk Miss Flora TAI

Legal Adviser Ms Clara TAM

Date 15 April 2011