

# 立法會

## *Legislative Council*

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### **Panel on Constitutional Affairs Background brief prepared by the Legislative Council Secretariat for the meeting on 18 July 2011**

#### **Guidelines issued by the Electoral Affairs Commission on election-related activities in respect of the Election Committee Subsector Elections**

#### **Purpose**

This paper gives a brief account of the past discussion held by the Panel on Constitutional Affairs ("the Panel") on the guidelines issued by the Electoral Affairs Commission ("EAC") on election-related activities ("the Guidelines") in respect of the Election Committee ("EC") subsector elections.

#### **Background**

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap. 541), EAC may issue guidelines relating to the conduct or supervision of an election. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections.

3. In accordance with section 6(2) of the EAC Ordinance, EAC shall consult the public on the proposed guidelines before they are finalized for issue to the public. The 2011 EC subsector elections will be held in December 2011. The proposed guidelines were issued by EAC on 23 June 2011 for public consultation until 22 July 2011.

#### **Past discussions of the Panel**

4. When the Panel discussed the proposed Guidelines in respect of the 2006 EC subsector elections at its meeting on 17 July 2006, some members expressed concern whether a Principal Official ("PO") who showed support for a particular candidate would prejudice the election of other candidates at the election. They asked whether the proposed Guidelines would govern the participation of POs in election-related activities in the EC subsector elections.

5. The Administration advised that unlike civil servants, POs were political appointees and allowed to participate in election-related activities. However, POs had to comply with the "Code for Principal Officials under the Accountability System" and the EAC's guidelines on election-related activities. The proposed Guidelines stipulated that a PO should not use any public resources for any election-related activities. In addition, a PO should ensure that when taking part in such activities, great care should be taken to ensure that there was no actual or potential conflict of interest with the business of the government or his own official duties.

6. Some members asked whether the proposed Guidelines would apply to websites which sought to promote or prejudice the election of a candidate or candidates at the election. The Administration advised that the same set of Guidelines applied irrespective of whether election advertisements ("EAs") were published on websites or in other forms. Before display of any EA, a candidate must deposit a copy of a declaration and two copies of the EA with the Returning Officer ("RO").

7. Some members pointed out that there were occasions when candidates might wish to target their electioneering activities at voters or authorized representatives at their living or working places, but sometimes the management of the building might disallow the conduct of electioneering activities on the premises under its management. They asked whether there should be statutory requirement to allow free access by candidates to conduct electioneering activities in a building irrespective of the decision of the management of the building.

8. The Administration explained that there were guidelines for owners and management of premises and organizations in handling applications for conducting electioneering activities on the premises within their jurisdiction. There were also guidelines for conducting electioneering activities in premises managed by the Government. Any decision should comply with the principle that fair and equal opportunity of access should be provided to all candidates competing in the same EC subsector for electioneering purposes, so as to ensure that the election was conducted fairly.

9. Some members noted that a person would be disqualified from being nominated as a candidate at a subsector election if he had ceased to have a substantial connection with the subsector concerned. They asked how a person's substantial connection with the subsector concerned would be determined. The Administration explained that after receipt of a nomination form, a RO would decide in accordance with the electoral law whether the nomination was valid and, in so doing, he might require additional information

from a candidate as he considered necessary, including information concerning his substantial connection with the subsector concerned. A candidate could appeal against the decisions of a RO with regard to the validity of his nomination.

## **Recent development**

### Electronic EAs

10. At the meeting on 20 June 2011, the Registration and Electoral Office ("REO") informed the Panel that subject to enactment of necessary amendments to the relevant regulations to be made under the EAC Ordinance, candidates would be allowed to submit electronic EAs and the required declaration electronically and to deposit with REO a declaration and the declared electronic EAs by the end of the first working day following the day on which the advertisements were sent or displayed through social networking or communication websites on the Internet. Members may wish to note that the proposed Guidelines for the 2011 EC subsector elections have set out the arrangements for submitting by electronic means the declaration and copy of an EA to be displayed, distributed or otherwise used by electronic means.

11. The proposed resolutions to amend the various regulations made under the EAC Ordinance were passed at the Council meeting of 6 July 2011.

### Arrangement for handling election returns with minor errors or omissions

12. During the scrutiny of the Electoral Legislation (Miscellaneous Amendments) Bill 2011 ("the Bill"), the Administration has informed the relevant Bills Committee that having regard to the strong views expressed by Members on the existing arrangement for handling election returns ("ERs") with minor errors or omissions, the Administration would introduce relevant amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). The second reading debate on the Bill was resumed on 6 July 2011, and the Administration had moved Committee Stage amendments to amend ECICO in order to implement a de minimis arrangement for handling ERs with minor errors or omissions. The Bill was passed by the Legislative Council ("LegCo") on the same day.

### Candidates to send joint promotional letters to voters free of postage

13. The Bill also amended section 38(2) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) to provide that a promotional letter sent by a candidate at an EC subsector election may contain information on any other candidate nominated for the same subsector. Members may wish to note

that the proposed Guidelines for the 2011 EC subsector elections have set out the arrangements for candidates to post joint promotional letters to voters free of postage. A promotional letter sent by a candidate at an EC subsector election may contain information on any other candidate of the same subsector who is also validly nominated at that election, and this joint promotional letter will not be regarded as the letter sent by that other candidate.

#### Electioneering on television and radio broadcast on the Internet

14. When the Panel discussed the proposed Guidelines in respect of the District Council election at its meeting on 20 June 2011, some members expressed concern about the proposed application of the "equal time" principle to the broadcast of election-related programmes on the Internet. They considered that the proposed regulations would impose restrictions on discussions or broadcasting activities on the Internet. Given the prevalence of online broadcast and the popularity of uploading videos on social networking or communication websites, members in general considered that it would not be feasible to comply with the Guidelines. REO assured members that EAC would listen to all the views on the proposed Guidelines and would consider making amendments as appropriate. Members may wish to note that EAC announced on 23 June 2011 that the proposed Guidelines relating to the application of the "equal time" principle to television and radio broadcast on the Internet would not be implemented.

15. The Administration is scheduled to brief the Panel on the proposed Guidelines for the 2011 EC subsector elections at the upcoming meeting on 18 July 2011.

#### **Relevant papers**

16. A list of the relevant papers available on the LegCo website is in the **Appendix**.

## Appendix

### Relevant documents on Guidelines issued by the Electoral Affairs Commission on election-related activities in respect of the Election Committee Subsector Elections

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	17.7.2006 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20.6.2011 (Item IV)	<a href="#">Agenda</a>
House Committee	24 June 2011	<a href="#">Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2011</a>

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