

立法會
Legislative Council

LC Paper No. LS 28/11-12

Paper for the House Committee Meeting on 10 February 2012

**Legal Service Division Report on
Electoral Legislation (Miscellaneous Amendments) Bill 2012**

I. SUMMARY

1. **Objects of the Bill** To revise the regulation of election advertisements (EA), make some necessary updates and modify arrangements for various elections.

2. **Comments** The more significant amendments proposed by the Bill seek to revise the regulation of EA in Chief Executive, Election Committee (EC), LegCo, District Council (DC) and Village Representatives elections to –
 - (a) allow a candidate to post EA or the EA's digital image electronically onto a Central Platform or Candidate's Platform so as to dispense with the need to submit the EA to the Returning Officer; and
 - (b) provide for the Court to grant relief for candidates who fail to publish EA in the specified manner and timeframe and with the specified particulars, such failure being otherwise an offence.

The names of constituents of functional constituencies (FC) are updated and those that have ceased operation deleted. Corresponding changes are made to affected EC subsectors.

Minor changes are made to counting arrangements to provide for central counting for the new DC (second) FC.

3. **Public Consultation** No public consultation is mentioned in the LegCo Brief.

4. **Consultation with LegCo Panel** The Panel on Constitutional Affairs was briefed on 21 November 2011 on the proposals relating to EA. While members generally welcomed the proposals, they were concerned about the practical difficulties to maintain the election website for 12 months after publication of the election results and to obtain prior consent from supporters for EA published on such website.

5. **Conclusion** Members may be interested to take a close look at the proposed changes to electoral arrangements and their practicality. Scrutiny of the Bill's provisions is continuing.

II. REPORT

Objects of the Bill

To revise the regulation of election advertisements (EA), make some necessary updates and modify arrangements for various elections.

LegCo Brief Reference

2. CMAB C1/30/5/4 issued by the Constitutional and Mainland Affairs Bureau in February 2012.

Date of First Reading

3. 8 February 2012.

Comments

4. The more significant amendments proposed by the Bill seek to revise the regulation of EA in Chief Executive, Election Committee (EC), LegCo, District Council (DC) and Village Representatives elections to –

- (a) allow a candidate to post EA or the EA's digital image electronically onto a Central Platform or Candidate's Platform so as to dispense with the need to submit the EA to the Returning Officer (RO). Allowing a candidate to post EA onto a central portal maintained by the Registration and Electoral Office would, according to the LegCo Brief, take away the burden of a candidate in maintaining his election website for 12 months after the election results are published;
- (b) dispense with the requirement for a candidate to obtain prior written consent from supporters if the candidate has neither requested, directed nor authorized any other person to request or direct the inclusion of support in the EA; and
- (c) provide for the Court to grant relief for candidates who fail to publish EA in the specified manner and timeframe and with the specified particulars, which failure would be an offence unless the relief is granted.

5. The names of constituents of functional constituencies (FC) are updated and those that have ceased operation are deleted. Corresponding changes are made to affected EC subsectors. Members may refer to Annex D of the LegCo Brief for a list of the update and Annex E for the deletions.

6. Minor changes are made to counting arrangements to provide for central counting for the new DC (second) FC and to other electoral arrangements. These include -

- (a) delivery of ballot boxes containing DC (second) FC ballot papers from the polling stations to the central counting station;
- (b) separating ballot papers and verifying ballot paper account at the central counting station;
- (c) delegation of power and duties from the RO of the DC (second) FC to the Assistant RO of the DC (second) FC for the latter to decide on questionable ballot papers; and
- (d) delegation of Presiding Officer's duties at LegCo and DC elections.

7. If enacted, the Bill will come into operation upon gazettal as Ordinance. However, Parts 3 (Amendments Relating to Election Advertisements), 6 (Amendments Relating to Improvement of Electoral Procedures for Various Elections), 7 (Amendments Relating to Counting Arrangements for DC (Second) FC) and 8 (Technical Amendments to Elections (Corrupt and Illegal Conduct) Ordinance) will commence on 1 June 2012.

Public Consultation

8. There is no mention of public consultation in the LegCo Brief.

Consultation with LegCo Panel

9. On 21 November 2011, the Administration briefed the Panel on Constitutional Affairs on the proposals relating to EA. Members in general welcomed the proposals to relax the regulation on EA so as to facilitate candidates to conduct electioneering activities. However, some members expressed concern about the practical difficulties for a candidate to comply with the proposed

requirement to maintain his election website for a 12-month period after publication of the election results and also considered the proposed penalty for failing to meet the requirement too severe. The Administration undertook to consider the suggestion of providing a central portal to be maintained by the Registration and Electoral Office for submission of electronic EA by candidates. Some members also expressed concern that as it might not be possible to ascertain the real identity of a person who had indicated support, there would be practical difficulties for the candidate to obtain prior written consent from that supporter before publishing the EA.

Conclusion

10. Members may be interested to take a close look at the proposed changes to electoral arrangements, especially those relating to EA, and their practicality.

11. Scrutiny of the drafting aspects of the Bill's provisions is still continuing.

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