

立法會

Legislative Council

LC Paper No. CB(2)243/15-16

Ref : CB2/SS/1/15

Paper for the House Committee meeting on 13 November 2015

Report of the Subcommittee on Declaration of Geographical Constituencies (Legislative Council) Order 2015

Purpose

This paper reports the deliberations of the Subcommittee on Declaration of Geographical Constituencies (Legislative Council) Order 2015 ("the Subcommittee").

Background

2. The Electoral Affairs Commission ("EAC") is a statutory and independent body responsible for the conduct and supervision of elections. Under section 18 of the EAC Ordinance (Cap. 541) ("EACO"), EAC is required to submit a report to the Chief Executive ("CE") on its recommendations for the delineation and the names of the geographical constituencies ("GCs") for an election to elect persons to be the Members for a new term of office of the Legislative Council ("LegCo"). In delineating GCs, EAC is required to follow the statutory criteria stipulated under sections 18 to 19 of the Legislative Council Ordinance (Cap. 542) ("LCO"), section 20 of EACO and certain working principles, which are set out in **Appendix I**.

3. Before finalizing the recommendations, EAC shall consult the public on its provisional recommendations for a period of not less than 30 days in accordance with section 19 of EACO and submit a report containing its recommendations to CE after considering the representations received. CE in Council must have regard to EAC's report when making a decision, which will be effected by way of an order published in the Gazette under section 18(2) of LCO. The order has to be tabled in LegCo for negative vetting.

The Order (L.N. 200)

4. The Order is made by CE in Council under sections 18 and 19 of LCO to declare areas of Hong Kong to be GCs for the purpose of electing Members for the Sixth LegCo, give names to those GCs and specify the number of Members to be returned for each of those GCs.

5. The effect of the Order is to change the numbers of Members to be returned in two GCs for the Sixth LegCo without changing the delineation and names of the existing five GCs. The details of the Order are set out in the table below -

Name of GC	Number of Members	Change to the Number of Members returned for each GC for the Fifth LegCo
Hong Kong Island ("HKI")	Six	Decreased by one
Kowloon West ("KW")	Six	Increased by one
Kowloon East ("KE")	Five	Unchanged
New Territories West ("NTW")	Nine	Unchanged
New Territories East ("NTE")	Nine	Unchanged

6. The Order will come into operation on 1 January 2016.

7. According to the LegCo Brief (File Ref: CMAB C1/30/8) issued by the Constitutional and Mainland Affairs Bureau ("CMAB") on 14 October 2015, EAC conducted a public consultation exercise on its provisional recommendations on the boundaries and names of GCs for the 2016 LegCo General Election from 21 May to 19 June 2015. EAC then submitted its final recommendations for consideration by CE in Council which accepted all the recommendations.

The Subcommittee

8. At the House Committee meeting on 23 October 2015, Members agreed to form a subcommittee to study the Order. The membership list of the Subcommittee is at **Appendix II**.

9. Under the chairmanship of Hon TAM Yiu-chung, the Subcommittee held a meeting with the Administration on 3 November 2015.

Deliberations of the Subcommittee

Number of GCs and the upper/lower limits of number of seats for each GC

10. Some members including Ms Cyd HO, Mr IP Kwok-him, Mr YIU Si-wing and Mr SIN Chung-kai have expressed concern about the range of deviation from

the resulting number¹ of KW (-9.63%) and that of NTW (+10.82%) under the current recommendations. They consider that the deviation range is far from satisfactory and warrants review of the existing arrangements so as to improve the deviation range (-9.63% to +10.82%). Mr SIN Chung-kai has proposed that assuming the number of Members to be returned for all GCs is to remain at 35 in future, consideration could be given to increasing the number of GCs to six, and re-delineating the NT GCs into three GCs in such a way that the 18 seats (i.e. the total number of Members to be returned for NTE and NTW) would be evenly distributed among the three NT GCs, with each getting six seats. As the numbers of seats allocated to the remaining three GCs are also in the range of five to six (i.e. HKI (six), KW (six) and KE (five)) under EAC's recommendations, Mr SIN considers that his proposal would help achieve a more even distribution of population and of the seats among all GCs.

11. The Administration has advised that the existing number of GCs and their boundaries have been in use since the First LegCo in 1998. Members of the public are generally well accustomed to them in elections, and prospective candidates/political parties have been conducting their district work based on the existing delineation of GCs. Introducing any changes would require detailed discussion by the public. The Administration has explained that the number of GCs was among the issues covered in the Consultation Document on the Methods for Selecting CE in 2017 and for Forming LegCo in 2016. However, the Administration did not receive many views from the public on the issue, whereas LegCo Members had expressed diverse views. Against this background, the Administration considers it appropriate to maintain the existing number of GCs for the 2016 LegCo general election. Moreover, there would not be enough time at the present stage to introduce changes by amending LCO. Nevertheless, the Administration has advised that it is open to any suggestion of adjustments to be made in the long run and would be pleased to explore any suggestion put forward by LegCo and the public.

12. Ms Cyd HO has expressed the view that, while she supports HKI being allocated one fewer seat, NTW should be allocated with one more seat so that the population served by each Member returned by NTW would be reduced from 233 378 to about 210 000, which would be close to that for KE. She has asked whether consideration would be given to amending LCO to adjust the maximum

¹ Under section 20(1)(a) and (b) of EACO, EAC shall ensure that the extent of each proposed GC is such that the population in that GC is as near as practicable to the number which results ("the resulting number") when the population quota is multiplied by the number of Members to be returned to LegCo by that GC. Where it is not practicable to comply with this requirement, EAC shall ensure that the extent of the GC is such that the population in that GC does not exceed or fall short of the resulting number applicable to that GC by more than 15%. According to section 17(1) of EACO, "population quota" means the total population of Hong Kong divided by the total number of Members to be returned for all GCs in the election. Based on the forecast population as at 30 June 2016, the population quota is: $7\,370\,500 \div 35 = 210\,586$.

number of Members to be returned for each GC so that more seats could be allocated to NTW. She has also asked when the existing upper and lower limits of number of seats for each GC were last amended.

13. The Administration has advised that the limits were last amended under the Legislative Council (Amendment) Bill 2010. The Administration has recapitulated the justifications² of the then proposal of the Administration that the ceiling for the number of seats to be allocated to each GC be set at nine instead of 10. The Administration has further pointed out that under the current recommendations, the deviation from the resulting number of NTW is still within the statutory permissible range. The proposal of allocating more than nine seats to NTW was also received by EAC during the public consultation exercise. However, as the number of seats for GCs and the upper and lower limits of number of seats for each GC are specified in section 19(1) and (2) of LCO, EAC could not accept the proposal.

14. Ms Cyd HO has expressed concern that the deviation from the resulting number of NTW is already close to the statutory limit. She considers that CMAB should commence a review of the relevant statutory requirements under LCO as early as possible in the light of the trend of population changes. She has stressed that failure to conduct such a review in time would pre-empt EAC from coming up with timely proposals to address concerns such as the increasing population of NTW and possible resultant deviation exceeding the statutory limit in future. Mr YIU Si-wing has suggested that in future, the Administration should advance its public consultation on the allocation of seats among GCs and related issues in order to allow sufficient time to work out feasible options which would achieve a more even distribution of population among GCs and improve the deviation range (-9.63% to +10.82%).

15. The Administration has advised that if the population size of NTW continues to grow and to such an extent that the deviation from the resulting number of NTW exceeds the statutory limit, depending on the then circumstances,

² As set out in the LegCo Brief (File Ref: CMAB C5/1 and C1/30/5) issued by CMAB on 8 December 2010, the population of NTW will reach 2 million in 2012 according to the population projections. Hence, consideration could have been given to allocating 10 seats to NTW. However, such an allocation would only require candidates to obtain 10% of the valid votes cast to win a seat. Furthermore, according to past experience with the proportional representation list-voting system, the last seat may be won by a candidate, who has obtained 5% (or even less than 5%) of the valid votes cast for the constituency. Allowing a candidate who has obtained 5% or less than 5% of the valid votes to win a seat is unprecedented and is not considered as an appropriate design for the election arrangement in Hong Kong. Under section 60C of LCO, a candidate or a list of candidates who has obtained less than 5% of valid votes cast for the constituency, unless elected, will not be entitled to have the financial assistance and under section 4(3) of the LegCo (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C), a candidate or a list of candidates who has obtained less than 3% of valid votes, unless elected, will have the election deposit forfeited. Accordingly, the Administration proposed that the ceiling for the number of seats to be allocated to a GC should be set at nine instead of 10.

consideration might be given by EAC to re-delineating the GC boundaries by following the established process of delineation and in accordance with the statutory requirements. The Administration has further advised that, if there is wide consensus in the community, consideration might also be given to changing the number of GCs and the Administration would be pleased to explore the option.

16. Mr IP Kwok-him has expressed concern that the number of valid votes that would need to be obtained by a candidate in order to win a seat in a GC allocated with nine seats is much smaller than that in a GC with five seats. He has also expressed concern that given the extremely large area of NTW, Members returned by that GC face immense difficulties in servicing their constituents. He considers that the Administration should also address such concerns. The Administration has advised that it would continue to listen to Members' views and suggestions regarding the number of GCs in mapping out the way forward.

Population forecasts

17. Members have noted that EAC has allocated the seats among the proposed GCs having regard to their projected population in accordance with the established calculation procedures, with a view to ensuring that the population in each proposed GC is as near as practicable to the resulting number as required under section 20(1)(a) of EACO (see footnote 1). Mr Alan LEONG has suggested that the Administration may consider conducting a study after each LegCo general election to compare the population forecasts as at the preceding 30 June with the actual population on that day so as to examine the accuracy of the population forecasts. The Administration has advised that the population forecasts are done by a dedicated working group headed by the Planning Department, drawing on all relevant data and input and such a system has worked well.

Recommendation

18. The Subcommittee and the Administration will not propose any amendment to the Order.

Advice sought

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

**Extract from the Electoral Affairs Commission's
Report on the Recommended Geographical Constituency Boundaries
for the 2016 Legislative Council General Election**

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Section 1 : Statutory Requirements

Provisions stipulated under the Legislative Council Ordinance

2.1 In making the recommendations in respect of the delineation of GC boundaries, the EAC is required to adhere to the following provisions stipulated under the Legislative Council Ordinance (Chapter 542) (“LCO”):

- (a) there are to be **5 GCs** for the purpose of returning Members at elections for those constituencies [section 18(1) of the LCO];
- (b) at a general election, **35 Members** are to be returned for all GCs [section 19(1) of the LCO]; and
- (c) the number of Members to be returned for each GC is to be a number, **not less than 5 nor greater than 9** [section 19(2) of the LCO].

Criteria stipulated under the EACO

2.2 In accordance with the EACO, the EAC shall:

- (a) ensure that the population in each proposed GC is as near as practicable to the number which results (i.e. “the resulting number”) when the population quota is multiplied by the number of Members to be returned to the LegCo by that GC [section 20(1)(a) of the EACO];
- (b) where it is not practicable to comply with paragraph (a) above in respect of a proposed GC, ensure that the population in that GC does not exceed or fall short of the resulting number applicable to that GC by more than 15% [section 20(1)(b) of the EACO]; and
- (c) ensure that each proposed GC is to be constituted by two or more contiguous whole District Council constituencies [section 20(2) of the EACO].

2.3 In making such recommendations, the EAC shall also have regard to:

- (a) community identities and the preservation of local ties [section 20(3)(a) of the EACO];

- (b) physical features (such as size, shape, accessibility and development) of the relevant area or any part thereof [section 20(3)(b) of the EACO];
- (c) existing boundaries of Districts¹ [section 20(4)(a) of the EACO]; and
- (d) existing boundaries of GCs [section 20(4)(b) of the EACO].

2.4 The EAC may depart from the strict application of the requirements set out in paragraph 2.2(a) and (b) above only where it appears that a consideration referred to in paragraph 2.3(a) and (b) above renders such a departure necessary or desirable [section 20(5) of the EACO].

Section 2 : Working Principles

2.5 Apart from the statutory requirements and criteria set out above, the EAC also adopted a set of long-established working principles (as shown below) for the current delineation exercise:

- (a) the boundaries of the existing 5 GCs should form the basis of consideration in the current delineation exercise;

¹ “Districts” means the 18 Districts as set out in Part II of Schedule 1 to the District Councils Ordinance (Chapter 547).

- (b) for those existing GCs where the population falls within the permissible range of the population quota requirement, their boundaries would be adopted as far as possible to form new GCs;
- (c) Hong Kong Island, Kowloon and the New Territories are to be treated separately, as these areas have been traditionally regarded as distinct from one another;
- (d) splitting of Districts by District Council constituencies should be avoided unless there are very strong reasons. Where splitting is necessary, it should affect the least number of Districts; and
- (e) factors with political implications are not considered.

**Subcommittee on Declaration of Geographical Constituencies
(Legislative Council) Order 2015**

Membership list

Chairman	Hon TAM Yiu-chung, GBS, JP
Members	Hon Emily LAU Wai-hing, JP Hon Frederick FUNG Kin-kee, SBS, JP Hon Cyd HO Sau-lan, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon IP Kwok-him, GBS, JP Hon Alan LEONG Kah-kit, SC Hon YIU Si-wing, BBS Hon MA Fung-kwok, SBS, JP Hon SIN Chung-kai, SBS, JP Dr Hon Elizabeth QUAT, JP Hon Martin LIAO Cheung-kong, SBS, JP Dr Hon CHIANG Lai-wan, JP Hon Christopher CHUNG Shu-kun, BBS, MH, JP
	Total : 14 Members
Clerk	Ms Joanne MAK
Legal Adviser	Ms Wendy KAN
Date	3 November 2015