

立法會
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Paper for the House Committee meeting on 26 February 2016

**Report of the Subcommittee on Amendments to Three Regulations
under the Electoral Affairs Commission Ordinance**

Purpose

This paper reports the deliberations of the Subcommittee on Amendments to Three Regulations under the Electoral Affairs Commission Ordinance ("the Subcommittee").

Background

2. On 26 November 2015, the Constitutional and Mainland Affairs Bureau issued the Consultation Document on Enhancement of Voter Registration System to consult the public on a series of proposed measures to enhance the voter registration ("VR") system. In the light of the outcome of the public consultation exercise, the Electoral Affairs Commission ("EAC") has made amendments¹ to the relevant regulations under the Electoral Affairs Commission Ordinance (Cap. 541) ("EAC Regulations") to implement the following two legislative proposals which received general public support for implementation –

- (a) advance the statutory deadline for applying for change of registration particulars to align with the deadline for new registration; and
- (b) use surface mail instead of registered post for sending inquiry letters and other electoral notifications issued by the Electoral Registration Officer.

Details of the above proposals are set out in paragraphs 5 to 12 of the Legislative Council ("LegCo") Brief (File Ref.: REO GC/51/0 C) issued by the Registration and Electoral Office ("REO") in January 2016 (see extract at **Appendix I**).

¹ The amendments are made by EAC under section 7 of Cap. 541.

The Amendment Regulations (L.N. 10 to L.N. 12 of 2016)

3. The Amendment Regulations (L.N. 10 to L.N. 12 of 2016) seek to amend the following EAC Regulations to implement the two proposals stated in paragraph 2(a) and (b) above in the 2016 VR cycle –

- (a) the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A);
- (b) the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B); and
- (c) the EAC (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K).

4. In addition, the Amendment Regulations repeal certain spent provisions in Cap. 541B and Cap. 541K.

5. The Amendment Regulations were gazetted on 22 January 2016 and tabled at LegCo on 27 January 2016 for negative vetting.

6. The Amendment Regulations come into operation on 18 March 2016.

The Subcommittee

7. At the House Committee meeting on 29 January 2016, Members agreed to form a subcommittee to study the Amendment Regulations. The membership list of the Subcommittee is at **Appendix II**.

8. Under the chairmanship of Hon TAM Yiu-chung, the Subcommittee held a meeting with the Administration on 16 February 2016. The Subcommittee has also invited the public to provide written submissions on the Amendment Regulations. The Subcommittee has noted a submission provided by Hong Kong Electorate Society [LC Paper No. CB(2)908/15-16(01)].

Deliberations of the Subcommittee

Using surface mail for sending inquiry letters and VR notifications

9. Dr Hon CHIANG Lai-wan has enquired whether there would be any remedial measures in case an elector fails to receive REO's inquiry letter sent by

surface mail and to respond to the inquiry. The Administration has explained that in conducting the inquiry process, REO does not contact the elector concerned only by means of the inquiry letter. REO will first contact the elector concerned by phone, mobile phone short message service ("SMS") or email (according to the contact details the elector has provided), so as to remind the elector to confirm his/her registered residential address before the statutory deadline. For electors who have received the inquiry letters but have not replied to REO by the deadline to confirm their residential addresses, REO will remove their names in compiling the provisional register and include them in the omissions list ("OL"). After including their names in OL, REO will also send reminder letters by surface mail to these electors to remind them to reply to REO in a timely manner so as to reinstate their registration status. The Administration has advised that in the 2015 VR cycle, REO initiated the inquiry process for about 80 000 electors in accordance with the relevant electoral laws, and has received replies from over 40 000 electors under inquiry.

10. Hon SIN Chung-kai has suggested that REO should send the reminder letters by both registered mail and surface mail (instead of only by surface mail) to the electors whose names are included in OL. He considers that the reminder letter is very important as it serves to inform the elector concerned that REO is about to remove his/her name from the final register if he/she still fails to reply to REO by the deadline on the reminder letter. Dr Hon CHIANG Lai-wan has expressed support for Mr SIN's suggestion.

11. The Administration has advised that it needs to carefully consider the suggestion from the perspective of resource implications and possible reaction of the electors. The Administration has further explained that REO is not required by the relevant electoral laws to issue the reminder letters. It is only an administrative measure adopted by REO since 2012 to remind electors whose names have been included in OL to respond to REO's inquiry process. The arrangement is, therefore, not pertinent to the current amendment which concerns using surface mail for sending inquiry letters and other VR notifications. Nevertheless, the Administration has undertaken to consider members' views and suggestion.

Drafting issues

12. Dr Hon CHIANG Lai-wan considers that there is room for improvement in the clarity of the Chinese version of some of the proposed amendments, and has given the following examples –

- (a) under section 10 of L.N.10 of 2016, "為人" in "最後為人所知的地址" seems ambiguous; and

- (b) under section 12(5) of L.N.12 of 2016, "將任何若無本款主任便須以書面(但無須以郵遞方式)向該人送交的通訊，送交予該人" is not easily comprehensible. It may be amended, by adding a comma, to read "將任何若無本款，主任便須以書面(但無須以郵遞方式)向該人送交的通訊，送交予該人"

The Administration has agreed to consider the above suggestions in future review exercise of the relevant EAC Regulations.

Recommendation

13. The Subcommittee does not object to the Amendment Regulations. The Subcommittee and the Administration will not propose any amendment.

Advice sought

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

Council Business Division 2
Legislative Council Secretariat
25 February 2016

File Ref.: REO GC/51/0 C

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF
ELECTORS) (LEGISLATIVE COUNCIL GEOGRAPHICAL
CONSTITUENCIES) (DISTRICT COUNCIL CONSTITUENCIES)
(AMENDMENT) REGULATION 2016**

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION)
(ELECTORS FOR LEGISLATIVE COUNCIL FUNCTIONAL
CONSTITUENCIES) (VOTERS FOR ELECTION COMMITTEE
SUBSECTORS) (MEMBERS OF ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2016**

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF
ELECTORS) (RURAL REPRESENTATIVE ELECTION)
(AMENDMENT) REGULATION 2016**

(Extract)

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AMENDMENT REGULATIONS

5. The Amendment Regulations seek to amend the following EAC Regulations in respect of the VR arrangements:

- (a) the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A);
- (b) the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541 sub. leg. B); and
- (c) the EAC (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541 sub. leg. K).

Aligning the statutory deadlines for applications for new registration and change of registration particulars

6. At present, the statutory deadlines for new VR applications for the geographical constituencies, functional constituencies and Election Committee subsectors (i.e., 2 May for a non-District Council (“DC”) election year and 2 July for a DC election year) and change of registration particulars (i.e., 25 June for a non-DC election year and 25 August for a DC election year) fall on two different dates. The primary purpose of such a design aims to reduce the time gap between the deadline for change of registration particulars and the polling day so that the registration particulars of electors can be brought more up-to-date before the election. However, there are views that the current arrangement prevents the public from inspecting the updated particulars of all electors in the provisional registers (“PR”), therefore undermining the transparency and effective public scrutiny of the register. If a fraudster impersonates an elector to update the latter’s particulars after the publication of the PR, the elector might only be aware of such after the publication of the final registers (“FR”) and, therefore, would be deprived of the chance of making claims and objections to correct his/her registration particulars in accordance with the statutory procedures.

7. To address the potential problem arising from the time gap between the statutory deadline for new registration and the deadline for change of registration particulars, it is necessary to advance the statutory deadline for change of registration particulars and align it with the deadline for new registration. By doing so, all requests for updating of registration particulars filed in that VR cycle will be reflected in the PR for public inspection. This can enhance the overall transparency of the VR system and prevent electors' addresses from being maliciously amended by a third party after publication of the PR.

8. After implementation of the proposal, the statutory deadline for new VR applications and change of registration particulars will both fall on 2 May in non-DC election years or 2 July in DC election years. The current statutory deadlines for publishing the PR and the FR will remain unchanged.

9. The Home Affairs Department agrees that the above alignment proposal should similarly apply to the Rural Representative Election. In the case of the Rural Representative Election, the statutory deadline for change of registration particulars will be advanced from 9 September to 16 July under the proposal.

Using surface mail for all inquiries and notifications

10. Under the current electoral laws, inquiry letters and some other notifications relating to VR for geographical constituencies, functional constituencies, Election Committee subsectors and Rural Representative Election must be sent to the relevant electors by registered post.

11. According to the arrangements of the Hongkong Post, if nobody is present on the spot to acknowledge receipt of a registered mail when it is delivered, the Hongkong Post will issue a notification of collection of registered item and request the addressee to collect the registered mail from the post office within two weeks. If the addressee fails to collect the registered mail within the timeframe, it will be returned to the sender. There are views that such an arrangement causes inconvenience to many electors. In case the elector misses the deadline for collecting the registered mail, he/she will not be able to respond to the inquiry process in time and will, therefore, risk losing his/her registration

in the next FR.

12. It is understood that whether a correspondence is sent by surface mail or registered post would not result in any difference in its legal effect¹. As such, it is considered appropriate to use surface mail, instead of registered post, for sending all inquiries and VR notifications in order to address the difficulty and risk experienced by electors described in paragraph 11 above.

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Registration and Electoral Office
January 2016

¹ According to section 8 of the Interpretation and General Clauses Ordinance (Cap. 1), “where any Ordinance authorizes or requires any documents to be served or any notice to be given by post or by registered post, whether the expression “serve” or “give” or “send” or any other expression is used, the service or notice shall be deemed to be effected by properly addressing, pre-paying the postage thereon and dispatching it by post or by registered post, as the case may be, to the last known postal address of the person to be served or given notice, and, unless the contrary is proved, such service or notice shall be deemed to have been effected at the time at which the document or notice would be delivered in the ordinary course of post.”

**Subcommittee on Amendments to Three Regulations
under the Electoral Affairs Commission Ordinance**

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Charles Peter MOK, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon IP Kin-yuen
Dr Hon CHIANG Lai-wan, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Total : 18 Members

Clerk Ms Joanne MAK

Legal Adviser Miss Rachel DAI

Date 5 February 2016