

立法會 *Legislative Council*

LC Paper No. CB(2)868/15-16(01)

Ref: CB2/SS/4/15

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the proposed amendments to three regulations under the Electoral Affairs Commission ("EAC") Ordinance (Cap. 541). It also gives a brief account of previous discussion of the Panel on Constitutional Affairs ("the Panel") on the subject.

Background

Statutory deadlines for the voter registration ("VR") cycles

2. The statutory deadlines for the VR cycles as provided in the relevant electoral laws are detailed in **Appendix I**. Taking the 2015 VR cycle (2015 is a District Council ("DC") election year) as an example, eligible persons who wish to register as electors but have yet to do so must submit their applications on or before 2 July 2015, so that their registration particulars can be included in the final registers ("FR") to be published in September 2015, and that they can vote in elections conducted thereafter. As for registered electors, there is no need for re-registration.

3. If there is any change in the registration particulars, such as the residential address, the elector should report the change to the Registration and Electoral Office ("REO") on or before 25 August 2015, so that his/her updated particulars can be included in FR to be published on or before 25 September 2015. The REO will, in accordance with the law, process applications for new registration lodged after 2 July and changes of registration particulars lodged after 25 August in the next cycle. In other words, the relevant VR information will not be included in FR to be published in September 2015.

4. In the 2015 VR cycle, REO received complaints from electors who

claimed that they had never submitted any application form for change of registration particulars to REO and suspected that a third party had impersonated them and submitted such forms to REO. Some raised concerns about the present arrangement that the statutory deadline for updating registration particulars was 24 days after the publication of the provisional registers ("PR"). This prevents the public from viewing the updated particulars of all electors in PR. If a fraudster impersonates an elector to update the latter's particulars after the publication of PR, the elector will only be made aware of that after FR is published, by which time he/she would have missed the chance of making claims and objections.

Proposal of revising the deadline

5. In light of the public concerns, the Constitutional and Mainland Affairs Bureau issued the Consultation Document on Enhancement of Voter Registration System ("Consultation Document") on 26 November 2015 setting out a series of proposed measures to consult the public, including advancing the deadline for change of registration particulars and aligning it with the statutory deadline for new registration. By doing so, all requests for updating registration particulars filed in that VR cycle will be reflected in PR for public inspection. According to the Administration, this can help prevent electors' addresses from being amended by a third party during the public inspection stage.

6. Taking the 2016 VR cycle (non-DC election year) as an example and assuming the aforementioned proposal of revising the deadline is adopted, the statutory deadline for filing requests for updating registration particulars and that for submitting applications for new registration will both be 2 May 2016. Under the proposal, applications for new registration or updating registration particulars submitted after 2 May 2016 will be processed in the 2017 VR cycle but not included in FR published in July 2016.

Means of sending inquiry letters and notifications

7. According to the current electoral laws, inquiry letters¹ (and some notifications relating to the decisions of the Electoral Registration Officer ("ERO")) must be sent by registered post addressed to the relevant electors. Generally speaking, according to the arrangements of the Hong Kong Post, if

¹ According to section 7(2) of the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (DC Constituencies) Regulation (Cap. 541A) and section 22(3) of the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), an inquiry must be made in writing and sent by registered post addressed to the person from whom it is made.

nobody is present on the spot to acknowledge receipt of a registered mail when it is delivered, the Hong Kong Post would issue a notification of collection of registered item and request the addressee to collect the registered mail from the post office within two weeks; otherwise, the registered mail will be returned to the sender.

8. Some people are of the view that since an elector who fails to acknowledge receipt of registered mail needs to collect the mail at the post office, this will cause inconvenience to many electors. In addition, some electors may have misunderstood that they are required to reply within two weeks after the issue of an inquiry letter. Besides, if an elector misses the deadline for collecting the registered mail sent by REO, he/she would not be able to collect the mail and hence could not know the details of the inquiry letters. The elector would then not be able to respond to REO's inquiry before the deadline and his/her VR would be cancelled as a result.

Proposal of using ordinary surface mail for all inquiries and notifications issued by ERO

9. Having considered that whether a correspondence is sent by ordinary surface mail or registered post would not result in any difference in its legal effect², the Administration proposes using ordinary surface mail instead for all inquiries and notifications for the convenience of electors.

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

10. In January 2016, EAC made three Amendment Regulations to amend the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (DC Constituencies) Regulation (Cap. 541A), the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) and the EAC (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K) to –

² 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.”

- (a) advance the statutory deadline for applying for change of registration particulars to align with the deadline for new registration³; and
- (b) use surface mail instead of registered post for sending inquiry letters and other electoral notifications issued by ERO.

11. The three Amendment Regulations will come into operation on 18 March 2016.

Consultation with the Panel

12. At its meeting on 21 December 2015, the Panel was consulted on the proposals set out in the Consultation Document, including the aforementioned two proposals. Members in general did not raise objection to the proposals.

13. Some members referred to a recent incident that a candidate of the 2015 DC election (who was also a serving DC member then) had been impersonated by a third party to submit a form to REO for changing her registered address by using a forged signature, and asked what would be done to prevent recurrence of similar incidents. The Administration advised that the proposal of advancing the statutory deadline for updating registration particulars to align with the deadline for new registration would also help address the above problem. It was proposed that in future, electors would also be required to fill out the elector's previous registered address in the form for application for change of address to facilitate the verification process. Furthermore, the Administration advised that for applications for change of an elector's registered address, REO planned to, apart from sending notifications to electors by post, alert the relevant electors via short message service ("SMS")/email (if available) at the same time when their registration particulars had been updated.

14. While expressing support for the proposal of changing to use ordinary surface mail for all inquiries and notifications issued by ERO, some members suggested that REO should also explore the use of other means of contact to communicate with electors, including SMS, email and paying home visits where appropriate. The Administration advised that since not all registered

³ The statutory deadline for change of particulars for geographical constituencies, functional constituencies and Election Committee subsectors elections is advanced from 25 June to 2 May for a non-DC election year and from 25 August to 2 July for a DC election year to align with the deadline for new VR. In relation to Rural Representative election, the statutory deadline for change of registration particulars is advanced from 9 September to 16 July to align with the deadline for new VR.

electors had provided their mobile phone numbers or email addresses⁴, REO would step up publicity to encourage electors to provide their phone numbers and email addresses besides residential addresses, so as to enable REO to contact them via various channels.

Relevant papers

15. A list of relevant papers which are available on the Legislative Council website is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
15 February 2016

⁴ The electoral law does not require that electors must provide telephone numbers and email addresses for the purpose of REO's communication with electors. At present, about 83% of the registered electors have provided REO with their telephone numbers (including fixed line/mobile phone); and about 14% of the registered electors have provided their email addresses (and most of them have also provided their telephone numbers at the same time).

Appendix I

Existing Statutory Deadlines for Voter Registration Cycles¹³

	Statutory Deadline in Non-District Council Election Year	Statutory Deadline in District Council Election Year
The public to submit new voter registration application or existing electors to submit applications for de-registration	2 May	2 July
The Electoral Registration Officer (ERO) to publish the provisional registers and omissions lists	1 June	1 August
The public to submit claims and objections; electors to apply for change of registration particulars	25 June	25 August
The Revising Officer to conduct hearings and make rulings on claims and objections (including reviews of rulings)	11 July	11 September
The ERO to publish the final registers	25 July	25 September

¹³ The statutory deadlines for voter registration cycles shown in this table means that the relevant action has to be made on or before the relevant date as listed.

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

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	21.12.2015 (Item III)	<u>Agenda Consultation Document on Enhancement of Voter Registration System</u>
--	(issued by the Constitutional and Mainland Affairs Bureau on 21 January 2016)	<u>Consultation Report on Enhancement of Voter Registration System</u>

Council Business Division 2
Legislative Council Secretariat
15 February 2016