

立法會
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Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill"). It also gives a brief account of the concerns raised by the Panel on Constitutional Affairs ("the Panel") during its discussion on the subject.

Background

Public consultation on enhancement of voter registration system in 2015

Improving the objection mechanism and increasing penalties on offences relating to voter registration

2. During the 2015 Voter Registration ("VR") cycle, there was a substantial increase in the number of notices of objection received by the Registration and Electoral Office ("REO"). There was a view that the penalties for provision of false information should be raised in order to enhance deterrent effect. There was also concern that the objection mechanism had been abused by making an objection without sound justification. Besides, some people suggested that for cases where the electors' registered addresses were confirmed to be correct after investigation by REO, they might not need to be passed to the Revising Officer ("RO") for hearing.

3. On 26 November 2015, the Constitutional and Mainland Affairs Bureau ("CMAB") published the Consultation Document on Enhancement of VR System for public consultation ending on 8 January 2016. The Consultation Report on Enhancement of VR System ("Consultation Report") was published on 21 January 2016. Having considered the views received during the public consultation, it was recommended in the Consultation Report to –

- (a) specify in the law that the burden of proof rested on the objectors and that the objector be required to appear at the hearings; and

(b) empower REO to process incontrovertible objection cases.

4. At the Panel meeting on 23 February 2017, members were consulted on the proposals to improve the VR objection mechanism as a follow-up to the recommendations made in the Consultation Report. The Administration proposed that while an objector or a claimant was not required to prove beyond doubt of the objection/ claim case(s), it should be set out in the law that he/she had the responsibility to provide sufficient information and grounds to substantiate his/her cases.

5. At the Panel meeting on 19 April 2017, members were consulted on another proposal made in the Consultation Report, i.e., to raise the penalties for making false statements in VR as set out in the subsidiary legislation under the Electoral Affairs Commission Ordinance (Cap. 541) from the current maximum penalties of a fine of \$5,000 and imprisonment for six months to a maximum fine of \$10,000 and imprisonment for two years in order to enhance deterrent effect.

Public consultation on review of electoral arrangements in 2017

6. In light of the experiences gained from the various elections in the 2015 to 2017 election cycle, CMAB issued a consultation paper on review of electoral arrangements for public consultation between 13 November and 29 December 2017. The Consultation Report on Review of Electoral Arrangements was published on 15 May 2018.

7. Members have all along expressed concern about the regulation of election-related materials published on social networking websites, particularly whether the expenses for publishing such materials on social networking websites would be regarded as election expenses, hence subjecting web surfers to inadvertent breach of electoral laws.¹ Having considered the views received during the public consultation, it was proposed in the Consultation Report on Review of Electoral Arrangements that the Government should introduce a targeted exemption of the criminal liability under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in respect of a third party (i.e., individuals or bodies that were neither the relevant candidates whose elections were being promoted or prejudiced nor their election expense agents) who

¹ Under the Elections (Corrupt and Illegal Conduct) Ordinance, election expenses can only be incurred by a candidate and his/her election expense agents, and the aggregate amount of election expenses incurred by or on behalf of the candidate is subject to a prescribed threshold. A person other than a candidate or a candidate's election expense agent, who incurs election expenses, commits an offence and is liable upon conviction to a fine of \$200,000 and imprisonment for three years.

incurred merely electricity and Internet access charges in publishing election advertisements on the Internet (including social media).

8. At its meeting on 21 May 2018, the Panel discussed the Consultation Report on Review of Electoral Arrangements (including the above proposed targeted exemption), and proposed amendments to electoral legislation which included proposals to improve the VR objection mechanism, raising the penalties for the offence of making false statements, as well as other proposed amendments to further improve and clarify the electoral legislation.

The Electoral Legislation (Miscellaneous Amendments) Bill 2018

9. According to LegCo Brief [File Ref: CMAB C1/30/5/4] issued by CMAB on 27 June 2018, the Bill seeks to amend certain electoral legislation to improve the VR arrangements, and the electoral procedures for the Chief Executive ("CE"), Election Committee Subsector ("ECSS"), Legislative Council ("LegCo"), District Council ("DC"), and Rural Representative ("RR") elections. The amendments include enhancing the VR system, introducing a targeted exemption from criminal liability in respect of the activity of a third party on the Internet, rationalizing electoral procedures and improving the clarity and consistency of certain electoral legislation.

10. Details of the legislative proposals are set out in paragraphs 2 to 21 of the LegCo Brief.

Panel's discussion on relevant issues

11. The major views and concerns raised by the Panel at the aforementioned meetings are summarized in the ensuing paragraphs.

Voter registration objection mechanism

Objector's responsibility to substantiate his/her case

12. At the meeting on 23 February 2017, some members opposed specifying in the law that the burden of proof rested on the objector, and queried whether the objector would be required to conduct investigations to collect evidence. They opined that the objector should only be required to demonstrate that he/she had reasonable doubt about the relevant case. The Administration clarified that while it proposed to prescribe in the law that the objector or claimant had the responsibility to provide sufficient information and grounds to substantiate his/her case, this did not mean that the objector/claimant was required to prove beyond doubt of the objection/claim case(s). Some members considered that the

Administration should explain in future how assessment would be made as to whether the objector had provided "sufficient" information.

13. At the meeting on 21 May 2018, some members reiterated their concern about the proposal to specify in the law that it was the duty of the claimant or objector to provide sufficient particulars relevant to the case. They enquired about the relevant standard of proof required under this proposal and whether the Administration would specify the standard of proof in the Bill.

14. The Administration has subsequently advised in writing [LC Paper No. CB(2)1592/17-18(01)] that the reason for using the wording "provide sufficient particulars" in the legislative proposal is to state clearly that it is the duty of the claimant or the objector to provide sufficient particulars relevant to the case. Nonetheless, the claimant or the objector is not required to justify beyond doubt or bear the burden of proof. As for the specific grounds and information that should be provided, it depends on the details and circumstances of the case. For example, if an objector lodges an objection because the relevant floor in the reported address of an elector does not exist, such information already indicates that the relevant address was incorrect. In such case, the relevant objection is supported by sufficient information to inform RO, the Electoral Registration Officer and the elector being objected to of the grounds of the objection.

Attendance at the hearings

15. Some members expressed the view that it should not be made mandatory for the objector to attend a hearing to make representations. They considered that the existing arrangement that an objector could choose whether to appear at the hearing in person or to make written representations to RO was more reasonable and should be maintained. The Administration advised that it did not propose to make it mandatory for the objector/claimant to appear at the hearing. However, if the objector only provided limited information in the notice of objection, RO might require the objector to attend the hearing so as to seek clarifications from the objector at the hearing. The Administration also proposed to set out in the law that RO might dismiss (not "shall dismiss") an objection if the objector did not appear at a hearing.

Empowering the Registration and Electoral Office to process incontrovertible objection cases

16. The Administration proposed to specify in the law that REO might first screen whether the objections/claims received were frivolous or vexatious, or involving clerical errors in the elector(s)' particulars. If so, REO might seek RO's approval to retain, add, delete or correct the relevant entries in the registers by written submissions in lieu of hearings. In any event, these cases would still be

determined by RO by way of written submissions, based on the grounds and facts in support of the objections/claims. Some members considered it necessary to define what would be regarded as "incontrovertible objection cases" for which hearings by RO would not be needed.²

Proposal to increase the maximum penalties for making false statements in voter registration

17. Members in general expressed support for the Administration's proposal in paragraph 5 above so as to reflect the severity of the offence concerned and to achieve sufficient deterrent effect. There was also a view that the proposed maximum penalties should be heavier on repeat offenders in order to enhance deterrent effect.

18. The Administration advised that as the proposed penalties were heavier than the current level of fine and term of imprisonment by one time and three times respectively, together with the fact that in meting out sentence, the court would take into account the past criminal record of a defendant, in particular whether he/she had committed the same offence before, the Administration considered that the proposed penalties already had a sufficient deterrent effect and there was no need to impose heavier penalties on repeat offenders.

Regulation of election advertisements published through the Internet (including social media)

19. Members in general expressed support for the proposed targeted exemption. Some members enquired whether the production cost of a self-made e-poster posted through the social media to promote the election of certain candidate(s) could also be subject to the proposed exemption if the production cost involved was only minimal. The Administration explained that the types of election expenses eligible for the proposed exemption were restricted to electricity and Internet access charges. As regards other costs, whether a particular item of expenditure should be regarded as an election expense was a question of fact to be answered based on the circumstances of each case.

Classification of certain ballot papers as clearly invalid to streamline the counting process

20. Members noted that the legislation for LegCo, DC and RR elections provides that certain overmarked ballot papers are to be treated as clearly invalid and not to be counted, and the Administration proposed introducing similar

² Members may refer to paragraph 7 of the LegCo Brief for details of the condition that has to be met in order for RO to direct that the case be determined without a hearing on the basis of written submissions only.

provision to the CE and ECSS elections. Besides, the Administration also proposed to stipulate in the legislation for LegCo and DC elections that a ballot paper with vote recorded for a candidate list with the only candidate(s) on the list deceased or disqualified is to be treated as clearly invalid and not to be counted, in order to streamline the counting process. Some members expressed concern about the rationale behind these proposals.

21. The Administration has advised in writing [LC Paper No. CB(2)1592/17-18(01)] that the above proposals intends to streamline the counting process. The Administration has pledged that the existing arrangement which allowed candidates and their agents to inspect questionable or clearly invalid ballot papers would remain unchanged.

Relevant documents

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

Council Business Division 2
Legislative Council Secretariat
16 October 2018

Appendix

Relevant documents on Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2018

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	23.2.2017 (Item III)	Agenda Minutes
	19.4.2017 (Item IV)	Agenda Minutes
	21.5.2018 (Item IV)	Agenda Minutes LC Paper No. CB(2)1592/17-18(01)

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