

立法會

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Paper for the House Committee meeting on 1 December 2017

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

Purpose

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

Background

2. According to the Administration, an elector at present only has to complete an application form to change his/her registered address and there is no need to submit any documentary proof. In the 2015 voter registration ("VR") cycle, the Registration and Electoral Office ("REO") had received complaints from electors who claimed that they had never submitted any application form for new registration ("NR")/updating registration particulars to REO, and suspected that a third party had impersonated them and submitted such forms to REO. If an elector being impersonated is not aware of the change in his/her registered address before the publication of the registers of electors and does not lodge a claim, he/she will not be able to vote in his/her respective constituency. The Administration considers that such situation should be stamped out and proposes to introduce the requirement of submitting address proofs when applying for change of registration particulars ("COP") upon move of residence.¹

The three Amendment Regulations (L.N. 172 to L.N. 174 of 2017)

3. On 16 October 2017, the Electoral Affairs Commission ("EAC") made three Amendment Regulations to amend three regulations under the Electoral

¹ Under the Administration's proposal, the requirement of producing address proofs will only be applicable to electors who apply for change of registered principal residential addresses. If the electors' applications for COP only involve particulars other than residential addresses (such as telephone numbers or email addresses), they are not required to produce address proofs at the same time.

Affairs Commission Ordinance ("EACO") (Cap. 541).² The amendments mainly aim to:

- (a) expressly empower the Electoral Registration Officer ("ERO") to require the electors/voters to submit documentary evidence in an application for the change of principal residential address in the relevant final registers ("FRs") and provide for the procedure for ERO to process the application; and
- (b) advance the relevant statutory deadlines for electors/voters to submit the application for COP by 30 days (i.e. for the Geographical Constituencies ("GCs"), Functional Constituencies ("FCs") and Election Committee Subsectors ("ECSSs"), the deadline will fall on 2 April for a non-District Council ("DC") election year or 2 June for a DC election year; and for Rural Representatives elections, the deadline will fall on 16 June).

The three Amendment Regulations also make consequential amendments and other amendments (e.g. amendments relating to the effect of inclement weather warning on the computation of certain dates and periods). Details of the amendments are set out in paragraphs 6 to 13 of the Legislative Council ("LegCo") Brief (File Ref.: REO GC/51/0 C Pt.2).

4. The three Amendment Regulations were gazetted on 20 October 2017 and tabled at LegCo on 25 October 2017 for negative vetting. Subject to negative vetting by LegCo, the three Amendment Regulations will come into operation on 1 February 2018.

The Subcommittee

5. At the House Committee meeting on 27 October 2017, Members agreed to form a subcommittee to study the three Amendment Regulations. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon CHEUNG Kwok-kwan, the Subcommittee has held one meeting with the Administration.

² The Amendment Regulations amend the following regulations under EACO:

- (a) the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A);
- (b) the Electoral Affairs Commission (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 Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541 sub. leg. K).

6. To allow more time for the Subcommittee to study the three Amendment Regulations, the Subcommittee agreed that the Chairman should move a motion to extend the scrutiny period of the subsidiary legislation to the Council meeting of 13 December 2017. However, the motion was not dealt with at the Council meeting of 22 November 2017 before the adjournment of the meeting. As such, the period for amending the three Amendment Regulations expired at the Council meeting of 22 November 2017.

Deliberations of the Subcommittee

Address proof requirement for change of registered principal residential addresses

7. Members in general have expressed support for the proposed new requirement of submitting address proofs when applying for COP upon move of residence as they agree that introducing the requirement would help REO verify the electors' address information and enhance accuracy and credibility of the registers of electors. The Administration has advised that with the new requirement, the possibility of a third party to impersonate a registered elector to submit an application for COP will also be significantly reduced because such act will not be successful as the third party concerned will not be able to produce the address proof. Hon Alice MAK considers that whether or not the introduction of the new requirement can achieve the desired effect will hinge on how far REO is able to carry out stringent verification of the electors' address information. The Subcommittee has requested REO to strengthen the verification of registration particulars when handling applications for COP.

8. Hon Alice MAK has enquired about the existing administrative measures to tackle the problem of a third party impersonating a registered elector to submit an application for COP. The Administration has advised that after processing an application for COP, REO will, apart from sending notification to the relevant elector by post, alert that elector via mobile phone short message service ("SMS") or electronic mail (if available) after his/her registration particulars have been updated. In this way, the relevant elector who has not submitted the application for COP can contact REO at once for follow-up action. In the 2017 VR cycle, REO has sent some 60 000 such SMS and some 300 electronic mails to the relevant electors.

9. Hon Alice MAK has also expressed concerns about the difficulties that may be encountered by some people, especially young electors living with their parents, in producing address proofs under the new requirement. She has requested the Administration to consider how to facilitate application for COP in order not to discourage the electors from applying for COP where necessary. The Administration has explained that to facilitate application for change of

principal residential address recorded in the existing FR, ERO will accept a wide range of documentary proofs as satisfactory evidence. Examples are set out below:

- (a) rates/water/electricity/towngas bill bearing the name and principal residential address of the elector or a letter bearing such particulars issued by a reliable organization such as a government department, bank, public authority, school or educational institution, etc. Original copy, photocopy or fax copy of the abovementioned documents will be accepted;
- (b) address proof bearing the name and residential address of another person, with a declaration signed by the elector to certify that (i) such other person is living with him/her at the same address; (ii) the address is the elector's principal residential address; and (iii) the address proof provided is a complete authentic copy or true copy of the original; or
- (c) statutory declaration made by the elector before a Commissioner for Oaths/a practising solicitor/a Justice of the Peace under the Oaths and Declarations Ordinance (Cap.11) to substantiate the claim of residing at the address. Free statutory declaration services are provided by the District Offices.

The Administration has advised that the abovementioned arrangement will be subject to EAC's deliberations before implementation of the address proof requirement on 1 February 2018.

10. In response to members' enquiries about the ways to facilitate submission of address proofs under the new requirement, the Administration has advised that the relevant application form for COP and address proofs can both be submitted by electronic means to REO.

11. The Subcommittee also notes that in relation to the requirement that ERO must be satisfied that the current entry as to the principal residential address in FR is incorrect, the Administration has advised that under section 2 of Cap. 541A, "principal residential address" means "the address of the only or principal residence (within the meaning of section 28(1B) or (3) of the Legislation Council Ordinance (Cap. 542))" of a person. Section 28(3) of Cap. 542 provides that "a reference to a person's only or principal residence in Hong Kong is a reference to a dwelling-place in Hong Kong at which the person resides and which constitutes the person's sole or main home". The criterion of being "sole" or "main" is essential for determining whether a residence of an

elector is his/her principal residence. In this connection, even if a person may actually reside in more than one place in Hong Kong or is moving to a new residence but the previous residence is still under his/her ownership, there should only be one "correct" principal residential address for the purpose of compiling the register of electors by ERO. As such, the provision of a new principal residential address to ERO with valid address proof would at the same time mean that the current principal residential address in the voter register is incorrect in this context.

Advancement of statutory deadline for applications for change of registration particulars

12. Hon Paul TSE and Dr Hon Junius HO have enquired about the rationale for the advancement of the statutory deadline for applications for COP by 30 days. The Administration has explained that at present, the statutory deadlines for NR and COP for GCs, FCs and ECSSs fall on the same date (i.e. 2 May for a non-DC election year and 2 July for a DC election year). The introduction of address proof requirement is a significant change in the VR system and more time would be required for processing applications because of the need to cross-check the address information and to seek clarification from the electors in suspicious cases.

13. Taking the 2017 VR cycle (falling in a non-DC election year) as an example, the Administration has advised that eligible persons who wished to register as electors, or existing electors whose registration particulars (e.g. residential address) had changed, had to submit VR applications or report the changes to REO on or before 2 May 2017, so that their registration or updated particulars could be included in the provisional register ("PR") published on 1 June 2017. To tie in with the introduction of the address proof requirement for COP, the statutory deadline for applications for COP will be advanced by 30 days to allow sufficient time for REO to verify the information on the address proof and follow up with the relevant electors in case of discrepancies, such that the applications can be further processed. After implementation of the new requirement, the statutory deadline for COP will fall on 2 April in non-DC election years or 2 June in DC election years.³

Drafting issue

14. In relation to the amendments made under L.N. 174, the Legal Adviser to the Subcommittee has enquired about the difference between the term "correspondence address" ("通訊地址") used in the new section 5(1)(b)(ii) of the Electoral Affairs Commission (Registration of Electors) (Rural Representative

³ Under the Administration's proposal, the current statutory deadlines for NR applications, as well as publication of PR, omissions list and FR will remain unchanged.

Election) Regulation (Cap. 541K) and the term "postal address" ("通信地址") as defined in section 1 (Interpretation) of Cap. 541K and used in other existing provisions in Cap. 541K. The Subcommittee has also requested the Administration to review the drafting.

15. After review, the Administration has advised that under section 1(1) of Cap. 541K, it is specified that "postal address" "does not include a post office box number unless it is coupled with a residential address". The term is used in sections 12(4) and 34 of Cap. 541K.

16. Specifically, section 34(2) of Cap. 541K provides that a communication that ERO is required to send by post to a person, in compiling an Indigenous Villages and Composite Indigenous Villages register, must be sent by post to the person's principal residential address or postal address. However, section 34(4) empowers ERO to send the communication "by any other means that the person has made available to ERO", if ERO considers it appropriate to do so.

17. The Administration has explained that for the purpose of the amendments to section 5(1)(b)(ii) of Cap. 541K, the policy intent is that the entry relating to a person in an Indigenous Villages and Composite Indigenous Villages register may show the correspondence address (but not restricted to the postal address) that the person has made available to ERO. The Administration, therefore, considers it appropriate to use "correspondence address", but not "postal address", in the new section 5(1)(b)(ii).

Advice Sought

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

Council Business Division 2
Legislative Council Secretariat
30 November 2017

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

Membership list

Chairman Hon CHEUNG Kwok-kwan, JP

Members Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon MA Fung-kwok, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Tanya CHAN

Total : 10 Members

Clerk Ms Joanne MAK

Legal Adviser Ms Clara TAM

Date 3 November 2017