

立法會
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Paper for the House Committee meeting

**Third Report of the Subcommittee on
subsidiary legislation relating to District Councils election**

Purpose

This paper reports on the deliberations of the Subcommittee on subsidiary legislation relating to District Councils election on the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation and the District Councils (Election Petition) Rules.

The Subcommittee

2. Chaired by Hon Andrew WONG, the Subcommittee is responsible for studying all the subsidiary legislation relating to the District Councils election in 1999. The membership of the Subcommittee is in **Appendix**.

3. The Subcommittee submitted its second report on the deliberations on the Declaration of Constituencies (District Councils) Order 1999 on 11 June 1999.

4. The Subcommittee held three meetings with the Administration to discuss the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation and the District Councils (Election Petition) Rules.

Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Regulation)

5. Made under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541), the Regulation (L.N. 142 of 1999) sets out the procedure for conducting an election to elect elected members of the District Councils. It applies to an ordinary election and a by-election.

District Councils (Election Petition) Rules (Rules)

6. Pursuant to the District Council Ordinance, the Rules are made to provide for matters relating to the preparation, lodgement, services, trial, withdrawal and costs of election petitions to the High Court for the purpose of questioning the election of a person to a District Council.

The deliberations of the Subcommittee

7. The main deliberations of the Subcommittee are summarized below.

Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation

8. Members have noted that the Regulation is modelled on the relevant regulation for the 1998 LegCo election with the following new measures in the light of past experience -

- (a) Two months before the first ordinary election, the Electoral Registration Officer must compile and publish a register showing the names, addresses and constituencies of electors. To safeguard the privacy of the electors, their identity card numbers, identification document numbers and sex will no longer be shown in the register;
- (b) Where it comes to the knowledge of the Returning Officer (RO) before the election day that a validly nominated candidate has died or is disqualified from being nominated, RO has to declare by a public notice or public announcement to that effect and to further declare which candidates remain validly nominated;
- (c) Within a no canvassing zone, door-to-door canvassing of votes will be allowed on the storeys above or below street level in a building within the zone;
- (d) An elector should use a “√” chop provided at the polling station to mark against the name of the candidate of his or her choice. Any vote not made by using the chop provided will be invalid;
- (e) A validly nominated candidate is entitled to send one free postage item to each elector in the constituency for which he is validly nominated. Requirements on the size and weight of a free postage item will be laid down;

- (f) Within seven days after an election advertisement has been displayed, distributed or used, a candidate must submit two copies of the advertisement to RO; and
- (g) It is an offence for a person to knowingly make a statement which is false, recklessly make a statement which is incorrect, or knowingly omit some material from an election-related document. A person or an elected member convicted of the offence will be disqualified.

Election advertisement

9. The definition of an election advertisement is provided in section 2 of the Regulation. The Administration has advised members that in determining whether a certain material is an election advertisement, it would be necessary to examine the evidence and circumstances in respect of whether a person is regarded as a candidate. This depends on whether he has the intention to stand for an election.

Canvassing of votes

10. Some members consider that there should be a territory-wide ban on canvassing activities on the polling day. The Administration is of the view that candidates should be allowed to choose, according to their own needs, when and how to carry out canvassing activities, so long as they would not undermine the fairness of the election or cause undue disturbance to the electors. The Administration does not see any justification for banning canvassing activities on polling day. Such a ban may affect on the freedom of expression which is a fundamental right guaranteed in the International Covenant on Civil and Political Rights (ICCPR). To be lawful, any restriction imposed on the protected freedom must be necessary and proportionate to the harm which it purportedly addresses.

11. According to the Administration, many countries do not prohibit the canvassing of votes on polling day. They include the United States, United Kingdom, Canada, Australia, Belgium and Netherlands. The Countries known to prohibit the canvassing of votes on polling day include Japan, Singapore, Taiwan and France.

12. Members question whether signatories to ICCPR which have adopted a ban on canvassing of votes on polling day have violated the provisions of ICCPR. The Administration has responded that it is not clear about the justifications on which these countries have adopted such a ban and whether they have entered any reservations when becoming signatories to ICCPR. Hence, the Administration is not in a position to comment on their policies.

13. On whether a canvassing zone could be extended to cover the whole constituency, the Administration has advised that this would have the effect of a territory-wide ban of canvassing activities and would go beyond the scope of section 7 of the Electoral Affairs Commission Ordinance. Legal advice of the LegCo Secretariat has confirmed that there is no such clear empowering provision in the principal Ordinance.

14. Some members, however, consider that canvassing of votes should be allowed on the polling day. They suggest that the size of the no canvassing zones be reduced and that the candidate and his election agent be allowed to greet electors in the no canvassing zones. The Administration has explained that the exact boundaries of no canvassing zones have yet to be finalized. Members' views would be taken into consideration in the determination of such zones. The Administration has further explained that if a candidate and his election agent are allowed to greet elector and canvass votes in the no canvassing zone, serious enforcement problems would be caused for the Presiding Officers and their staff.

15. Some members maintain the view that canvassing of votes should be totally prohibited on the polling day.

False declaration

16. The Administration has clarified that section 104 of the Regulation on false declaration applies only to election-related documents such as forms, declarations, authorizations and nomination forms. False statements and election advertisements are not covered by section 104 on false declaration, but are regulated by section 16 of the Corrupt and Illegal Practices Ordinance (Cap.288). A person convicted of the offence under section 104 is disqualified from being nominated as a candidate and from being elected as an elected member. An elected member convicted of the offence is disqualified from holding office.

District Councils (Election Petition) Rules

17. Members have noted that the Rules, which are modelled on the Legislative Council (Election Petition) Rules, are very similar to the relevant subsidiary legislation under the former Electoral Provisions Ordinance.

Recommendation

18. The Subcommittee recommends that the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation and the District Councils

(Election Petition) Rules be supported.

Advice sought

19. Members are invited to support the recommendation of the Subcommittee in paragraph 18 above.

Legislative Council Secretariat
25 June 1999