

立法會
Legislative Council

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by the Administration and
cleared with the Chairman)

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Legislative Council
Subcommittee on subsidiary legislation
Relating to 2000 Legislative Council election

Minutes of 8th meeting
held on Tuesday, 28 March 2000 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon David CHU Yu-lin
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Jasper TSANG Yok-sing, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk

Members Absent : Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon CHAN Yuen-han
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP

Public Officers Attending : Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Lawrence PENG
Senior Assistant Law Draftsman

Mr Sunny CHAN
Senior Government Counsel

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Eleanor CHOW
Senior Assistant Secretary (2)7

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I. Meeting with the Administration

Electoral Affairs Commission (Electoral Procedure) (Legislative Council)
(Amendment) Regulation 2000

(LegCo Brief issued by the Registration and Electoral Office on 14 March 2000,
LC Paper Nos. LS110/99-00 and CB(2)1477/99-00(01))

Deputy Secretary for Constitutional Affairs (DSCA) said that the present arrangements for elections to the Legislative Council (LegCo) were set out in the Legislative Council Ordinance and the Electoral Affairs Commission (Electoral Procedure) (LegCo) Regulation (EAC(EP)(LC)R). Having regard to the enactment of the LegCo (Amendment) Ordinance 1999 (LC(A)O) and the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO) as well as the EAC's recommendation on measures for improvement of electoral arrangements in the light of the experience from the 1998 LegCo elections and 1999 District Councils (DC) election, amendments to the existing EAC(EP)(LC)R were necessary.

2. At the invitation of the Chairman, Chief Electoral Officer (CEO) advised that the four major amendments proposed in the Amendment Regulation were -

(a) amendments consequent upon the changes introduced in the

- LC(A)O 1999;
- (b) amendments for general improvements and streamlining procedures;
 - (c) amendments for new counting arrangements; and
 - (d) other amendments.

Details of the proposed amendments were set out in the LegCo Brief.

Counting arrangements

3. The meeting focused its discussion on the counting arrangements. Members noted that following the public consultation conducted by the EAC on the ways to conduct the count for the 2000 LegCo elections, the EAC had decided to set up -

- (a) one counting station at each of the 5 geographical constituencies (GCs) to count GC ballot papers; and
- (b) one central counting station to count all functional constituency (FC) and Election Committee (EC) ballot papers.

4. In response to the Chairman, CEO said that for the 2000 LegCo election, two kinds of polling stations would be set up -

- (a) for the 5 GCs, there would be about 500 polling stations which would also be used for polling for the 24 ordinary FCs; and
- (b) for the four special FCs and the EC, four polling stations in Hong Kong Island, Kowloon and the New Territories would be designated. Special FC and EC electors would have to cast all the votes which they were entitled to at any one of these polling stations, including their GC and FC votes.

5. CEO further said that the EAC had yet to decide on the venue of the counting stations. However, the counting station for Hong Kong Island and the central counting station for FC/EC would be located at the Hong Kong Convention and Exhibition Centre.

6. Noting that the last election result (in respect of a GC) of the 1998 LegCo election was announced at about 5 pm on the day following the election day, members expressed concern about the long time taken to complete the count in the election.

7. CEO advised that the fact that all ballot boxes from about 500 polling stations were required to be delivered to the central counting station at about

the same time in the 1998 LegCo election had created a bottleneck. It was expected that the situation would be improved in the coming LegCo election with the adoption of the new counting arrangements under which ballot boxes would be delivered to one of the six counting stations.

8. CEO further said that the time spent on determination of the validity of questionable ballot papers was considerably long in the 1998 LegCo election. For the 2000 LegCo election, upon the close of poll, GC ballot boxes from GC polling stations would be delivered to and opened at the respective GC counting station. After all the ballot boxes had been opened, any FC ballot papers found in GC ballot boxes would be sorted, recorded, sealed and delivered to the central counting station; and similar arrangements would also be made to deliver any GC ballot papers found in FC ballot boxes to the relevant GC counting station. In response to Mr TSANG Yok-sing, CEO said that in order to reduce the delay caused by misplacement of ballot papers, the EAC was considering to report the number of misplaced ballot papers to the relevant counting station by telephone, before the delivery of these ballot papers.

9. The Chairman suggested that to avoid misplacement of ballot papers, voters should be given one type of ballot paper at one time, for instance, a person who was entitled to vote in both the GC and FC would be given a FC ballot paper after he had cast his GC vote.

10. CEO said that under the existing arrangement, two ballot papers would be issued at the same time to a voter who was entitled to vote in both the GC and FC. The Chairman's proposal would affect traffic flow inside the polling station, given that the voter had to queue up twice to get the respective ballot papers.

11. DSCA said that the count involved a number of processes, among which were the delivery of ballot boxes from polling stations to counting stations; the sorting of ballot papers by constituencies; the counting of ballot papers in respect of each polling station for verification of the ballot paper account; and the handling of questionable papers. In response to the Chairman's question, DSCA said that there were considerable differences between the electoral arrangements in Hong Kong and Taiwan. For instance, the count for the Taiwan election was faster because it was conducted at individual polling stations.

12. Mr NG Leung-sing said that with the use of the chop with a tick, the number of questionable ballot papers should be reduced. He recalled that in the 1998 LegCo election, it took 45 minutes to determine a questionable ballot paper in one incident. CEO responded that in the last LegCo election, questionable papers were set aside for determination of validity by the

Returning Officer (RO) in the presence of candidates or their agents at the end of the count. In order to save time for the count in the 2000 LegCo election, the RO would deal with questionable papers in batches. There were also guidelines to assist ROs to determine whether a questionable ballot paper was valid. In response to Miss CHOY So-yuk, CEO confirmed that the count would start upon the arrival of the first ballot box at the counting station.

13. Mrs Selina CHOW said that for the interests of the public and candidates, the EAC should make a performance pledge on the target time for declaration of the election result of the 2000 LegCo election, having regard to the new counting arrangements to be adopted and in the light of the experience of the 1998 LegCo election. The Chairman said that it was a reasonable expectation that all the results should be announced by 6 am on the day following the election day, i.e. when the community woke up. Members unanimously agreed that the election results should be announced to the public as soon as possible.

14. CEO said that with new measures to streamline the counting processes, the EAC expected that the count in the 2000 LegCo election could be completed faster than that of the 1998 LegCo election. However, without past experience on how the new counting arrangements would work, it was difficult to predict the time taken for completing the count. The EAC was therefore not in a position to advise the likely time for declaration of the election results. Members suggested and CEO agreed that the matter should be followed up by the Panel on Constitutional Affairs.

(Post-meeting note : The Panel discussed the matter on 15 May 2000 and 19 June 2000.)

15. In response to Mr TSANG Yok-sing, CEO said that as in the 1998 LegCo election, some 2 000 workers would assist in the count for the 2000 LegCo election. The EAC would exercise flexibility in deploying manpower resources in order to expedite the counting process. Consideration would also been given to using automatic counting device to ensure accuracy of the count.

Scrutiny of the Amendment Regulation

Section 10 – Nomination of a candidate for a GC

16. On the difference between the proposed and existing section 10(6), CEO explained that under the proposal, if a candidate was usually known by a name different from that shown on the candidate's identity document, he might also include that different name in the nomination form. He said that the same practice was adopted in the 1999 DC election.

Section 25 – Appointment of election expense agents

17. CEO explained that in the light of the ECICO which provided for the authorization of election expense agents, some provisions of section 25 became redundant and were proposed to be repealed.

Section 28 – Designation of polling and counting stations

Adm

18. Referring to the proposed section 28(9)(a)(i) and (ii), the Chairman questioned the need to repeat the words “general election” twice in the provision. Deputy Solicitor General (Constitutional) (DSG) undertook to reconsider the drafting of the proposed section.

Section 30 – Allocation of alternative polling stations

19. In response to the Chairman, CEO explained that electors of the four special FCs and the EC would have to cast all the votes which they were entitled to at any one of the four polling stations designated for special FCs and the EC, instead of casting their votes at their respective GC polling stations. Some 1 400 electors were under this category.

Section 33 – Allocation of special polling stations

20. Pointing out that a person might impersonate a person with a disability to apply for reallocation of a polling station specifically designated for such voters by telephone or facsimile, Miss CHOY So-yuk asked how the EAC would verify the request. CEO explained that the Chief Electoral Officer would verify the identity of the applicant by asking his name, address, identity card numbers, etc; and under section 33(4), the Chief Electoral Officer would inform the applicant the result of the application in writing. In response to the Chairman, CEO said that past experience had indicated that the requirement for such a request to be made at least 5 days before polling day was adequate.

Section 37- Preparation for polling

21. New section 37(6) required that the Chief Electoral Officer to provide, among others, the necessary number of chops at GC and EC polling stations to enable electors to mark their ballot papers. The Chairman pointed out that the drafting of the section was so tight that no election would be held in the event that the chops could not be provided, e.g. they had been stolen.

22. DSG and CEO responded that the Chief Electoral Officer was under a statutory duty to take precautionary measures to have safe custody of the chops before the day of election. CEO assured members that there would be sufficient supply of chops to deal with emergency situations. On the

Chairman's question on measures to prevent any person from taking the chop away from the polling station, CEO explained that each elector was provided with a cardboard to which the chop with a tick was attached. After voting, the elector was required to return the same to the polling staff before leaving the polling station. This arrangement was adopted in the 1999 DC election.

Section 40 – Canvassing activities in no canvassing zones

23. CEO explained that under section 40(17), a person might canvass for vote on the storeys above or below street level in a building within the no canvassing zone other than a building in which there was a polling station. The arrangement was also adopted in the 1999 DC election. In response to Miss CHOY So-yuk, CEO confirmed that behaviour such as smiling in no canvassing zones and no staying zones would not be regarded as engaging in canvassing activities. He said that a written reply had previously been provided to a LegCo question on the subject.

Section 42 – Appointment of polling agents

Adm

24. Referring to the proposed section 42(8) about the requirement for a candidate to give notice of appointment of a polling agent to the Chief Electoral Officer at least "1 week" before the polling day, the Chairman pointed out that it was more common to refer to "days" instead of "week" in drafting of similar provisions. Senior Assistant Law Draftsman (SALD) undertook to reconsider the drafting of the section.

Section 44 – Admission to polling station

25. Members noted that under new section 44(13), a Presiding Officer (PRO) might permit a child accompanied by an elector to enter a polling station, if he considered that the child should not be left unattended and would not disturb or cause inconvenience to any person in the polling station.

26. The Chairman held the view that the PRO should be given discretion to decide whether to permit a child to enter a polling station. The second pre-condition was absurd as the PRO would have no idea as to whether a child would or would not create disturbance inside a polling station. He said that it might not be necessary for the Amendment Regulation to specify the two pre-conditions.

27. DSG responded that the new section was drafted in accordance with the direction of the EAC. CEO advised that the first pre-condition was adopted for the 1998 LegCo election following criticisms that PRO was given too much discretion in respect of admission to polling station. The second pre-condition was proposed for the 2000 LegCo election in the light of the experience of the

1999 DC election. In further response to the Chairman, CEO said that the admission of pets to polling station was not covered in the Regulation.

Section 45 – Offences at a polling station

28. In response to Mr NG Leung-sing's question on section 45(1) and (2) which prohibited a person from communicating with an elector, using a mobile phone or other device for communication and filming inside a polling station, CEO explained that the purpose of the section was to ensure that electors would not be unduly disturbed inside a polling station. On Miss CHOY So-yuk's suggestion that interpreter service should be provided in certain polling stations to assist voters who spoke in a dialect other than Cantonese to vote, CEO said that he did not see the need to do so as the voting procedure was easy to follow and that there had been no problem in the past elections. In the event that a voter had difficulty in understanding the voting instruction, the PRO would provide appropriate assistance.

29. Mr YEUNG Yiu-chung sought clarification on the circumstances under which the use of a paging machine or mobile phone inside a polling station would be regarded as an offence under section 45(1)(b). Mr TSANG Yok-sing pointed out that according to section 45(1), a person would only commit an offence if he acted contrary to a direction of the PRO not to do so. In further response to the Chairman, CEO confirmed that a notice on the prohibition of the use of communication device would be posted inside polling stations.

30. Referring to the new section 45(2), Miss CHOY So-yuk asked about the circumstances under which the PRO or RO might authorize photographing, filming and making video or audio recording inside a polling station. The Chairman said that an example was filming for the purpose of TV programmes relating to LegCo elections. CEO added that in the 1998 LegCo election, the EAC had permitted filming inside a particular polling station for news reporting purpose as the polling station was flooded with water.

31. Miss CHOY So-yuk said that in the 1999 DC election, a registered elector was not allowed to cast his vote at a polling station designated for his constituency, as indicated on the poll card sent to him. This was because his name could not be found on the voter register. She said that in future elections, such a person should be allowed to cast the vote in a special ballot box. The person's eligibility to vote could be ascertained at a later stage. The Chairman suggested that Miss CHOY should give relevant information of the case to the EAC for investigation.

32. CEO responded that he was not aware of such a complaint in the 1999 DC election. He said that in the scenario described, the PRO could make

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enquiries with the REO to find out whether the person was a registered elector and which polling station was designated for him to vote. The PRO would also record in a log book any complaints received on polling day. The Chairman said that the aggrieved person could also be asked to sign in respect of the relevant entry in the log book so that he knew that his complaint was duly recorded. CEO undertook to consider the Chairman's suggestion.

Section 53 - Issuance of ballot papers

33. Mr NG Leung-sing asked whether there were any incidents in the past where the number of ballot papers in ballot boxes exceeded the number of voters in a polling station as a result of, for instance, a ballot paper inadvertently issued by polling staff to a voter. CEO replied in the negative. He said that a PRO could issue an extra ballot paper to a voter who asked to exchange a spoilt ballot paper for another ballot paper. He added that the situation of the total number of ballot papers issued exceeding the number of ballot papers cast could happen if a voter who was given a ballot paper did not put it into the ballot box. The Chairman supplemented that for control purpose regarding the total number of ballot papers issued, the counterfoil of each ballot paper bore a serial number.

II. Date of next meeting

34. Members agreed that the next meeting should be held on 30 March 2000 at 1:00 pm.

35. The meeting ended at 4:35 pm.

Legislative Council Secretariat
30 June 2000