

立法會

Legislative Council

LC Paper No. CB(2)2317/02-03

Ref : CB2/SS/12/02

Paper for the House Committee meeting on 6 June 2003

First report of the Subcommittee on subsidiary legislation relating to District Councils election gazetted on 16 May 2003

PURPOSE

This paper reports on the deliberations of the Subcommittee on the following two items of subsidiary legislation relating to the 2003 District Councils (DCs) election -

- (a) District Councils (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003; and
- (b) Declaration of Constituencies (District Councils) Order 2003.

THE SUBCOMMITTEE

2. At the House Committee meeting on 23 May 2003, a subcommittee was formed to study the following three items of subsidiary legislation relating to the 2003 DCs election gazetted on 16 May 2003 and tabled in Council on 21 May 2003 -

- (a) District Councils (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003;
- (b) Declaration of Constituencies (District Councils) Order 2003; and
- (c) Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003.

3. Under the chairmanship of Hon IP Kwok-him, the Subcommittee has held two meetings with representatives of the Administration and the Registration and Electoral Office (the Administration's team) to discuss the three items of subsidiary legislation. A membership list of the Subcommittee is in the **Appendix**.

4. The Subcommittee has completed its scrutiny of the first two items of subsidiary legislation (paragraph 2(a) and (b) above) and its deliberations are summarized below. The Subcommittee will submit a further report on the remaining item of subsidiary legislation (paragraph 2(c) above) when it has completed its work.

DISTRICT COUNCILS (SUBSCRIBERS AND ELECTION DEPOSIT FOR NOMINATION) (AMENDMENT) REGULATION

Purpose of the Amendment Regulation

5. The Amendment Regulation seeks to -

- (a) clarify that the election deposit lodged by or on behalf of each candidate who has received 5% of the total number of valid votes shall be returned; and
- (b) provide that a nomination paper in respect of any constituency shall be subscribed by 10 persons, but no more than 20 persons may subscribe a nomination paper in any event.

Subscription requirements

6. Under the principal Regulation, a nomination for a candidate in a DC election shall be subscribed by at least 10 voters registered for the relevant constituency. A voter shall not subscribe more than one nomination, otherwise his signature shall be inoperative in respect of any nomination paper other the one first delivered. A Returning Officer (RO) has a statutory obligation to determine the validity of a nomination.

7. According to the Administration, in the 1999 DC elections, there were candidates who had submitted very large numbers of subscribers, including a significant proportion of ineligible subscribers. Due to the relevant legislative requirements, ROs had to check all the subscribers on these nomination papers, even after the legal minimum requirement had been met, to "lock in" all valid subscribers so that their signatures appearing on any subsequent nomination papers would be invalidated. This generated a large amount of work for ROs, and caused unnecessary strain on public resources.

8. The Administration has proposed that the present statutory provisions be amended to prescribe the exact number of subscribers for a nomination paper. However, a candidate is allowed to submit 10 more subscribers as a 100% buffer to help ensure that there would be a sufficient reserve of potential subscribers that could be used to make up the shortfall in case any of the first 10 subscribers is found to be invalid. In the case where the number of persons subscribing a

nomination paper has exceeded 10, any surplus person subscribing the nomination paper concerned will not be regarded as having subscribed the nomination paper concerned and may subscribe another nomination paper.

Verification of validity of subscriptions

9. Hon Andrew WONG has suggested that the date on which a person has subscribed a nomination should be indicated on the nomination paper. If the person has subscribed more than one nomination paper, his signature shall be inoperative on any of the other nomination papers so subscribed other than the first one subscribed. RO should verify the eligibility of the subscribers and the validity of the subscriptions in the order of the dates of the subscriptions as indicated on the nomination paper until the required number has been reached.

10. The Administration's team considers that there are a number of problems with the suggestion, e.g. the same date might be entered in respect of a number of subscriptions on the nomination paper, and RO might have difficulties in verifying the accuracy of the subscription dates on the nomination paper in case of disputes. The Administration's team has advised that under the proposed arrangement, a candidate is required to rank the subscribers on the nomination paper, and RO will verify the eligibility of the subscribers and the validity of the subscriptions according to the order determined by the candidate, until the required number has been reached. Any surplus subscribers would not be regarded as having subscribed the nomination concerned. If a person has subscribed more than one nomination, his signature will only be considered operative on the first nomination paper delivered.

11. In response to the query raised by the legal adviser to the Subcommittee concerning the meaning of the reference to "the first one delivered" in proposed section 7(5)(b) of the Amendment Regulation, the Administration has advised that "the first one delivered" means the first one of those other nomination papers delivered on which the signature is not surplus (or not unused). The Administration has agreed to propose amendments to clarify its policy intention to -

- (a) recognize/accept a subscriber's signature on the nomination paper first delivered on which the signature is neither surplus nor unused; and
- (b) reject the subscriber's signature on any subsequent nomination paper other than the one mentioned in paragraph 11(a) above.

The Subcommittee has no objection to the Administration moving the amendments which are technical in nature.

12. In response to the enquiries of members including Hon WONG Yun-kan

and Hon HUI Cheung-ching, the Administration's team has advised that appropriate nomination paper will be specified by the Electoral Affairs Commission (EAC) and designed in such a way so as not to allow candidates to submit more than the required number plus the 100% buffer. It is intended that the nomination paper may contain a footnote to the effect that the nomination paper should not contain more than 20 subscribers' signatures and that, in the case of an excess, the surplus signatures will be disregarded by RO. As required under section 16 of the Electoral Affairs Commission (Electoral Procedure) (Districts Councils) Regulation, RO must, as soon as practicable after receiving a nomination paper, decide whether a candidate is validly nominated. In view of the small number of subscribers required for the DCs election, RO could determine the validity of the nomination on the spot. If after verification by RO, the number of valid subscribers submitted by a candidate falls short of the required number, the candidate can rectify the nomination paper by providing additional names to make up the shortfall. Under section 18 of the Electoral Affairs Commission (Electoral Procedure) (Districts Councils) Regulation, RO allows a nomination paper to be rectified within the nomination period.

100% buffer

13. Hon Andrew WONG has suggested that ROs should be given discretion to allow a candidate to make up the shortfall for subscribers after the nomination period. This would cater for situations where a candidate who has submitted a nomination close to the deadline faces invalidation of the nomination because the number of valid subscribers falls short of the required number. Hon Cyd HO considers that a reserve of 10 subscribers is inadequate and has requested the Administration to consider increasing the 100% buffer to cater for such situations.

14. The Administration's team does not agree that ROs should have the discretion to accept subscribers after the nomination period as this would create other problems and lead to disputes. It is advisable for candidates to try to ascertain as far as possible whether the subscribers on his nomination paper are all valid, and submit their nominations well before the expiration of the nomination period to allow for time for any error in their nomination papers to be corrected. According to past experience, a 100% buffer would be sufficient.

Register of electors

15. As a nomination for a DC election is required to be subscribed by 10 eligible voters registered for the relevant constituency, Hon Howard YOUNG has asked whether a person could obtain information on registered voters before the nomination period, in order for him to ascertain the status of the potential subscribers.

16. The Administration's team has advised that the register of electors is available for public inspection. Any person who would like to obtain a copy of

or any extract of the register could approach REO at any time. However, the person is required to make a declaration to the effect that the information relating to any person contained in the register will only be used for a purpose related to an election.

Amount of election deposit and threshold for forfeiture

17. The Amendment Regulation seeks to put it beyond doubt that an unsuccessful DC election candidate will have his election deposit returned, as long as the number of votes received by that candidate has met or exceeded the prescribed threshold i.e. 5%. Members of the Subcommittee agree that the prescribed threshold of 5% is appropriate.

18. Hon Cyd HO has requested the Administration to provide information on how the current level of election deposit of \$3,000 was arrived at, when was it last reviewed, and whether it should now be reviewed. She considers that the amount should be adjusted downwards so as to encourage more people to participate in DCs election.

19. The Administration's team has explained that the requirement for election deposit and the provision for its forfeiture are long established and well accepted measures to prevent abuse of the electoral system by frivolous candidates. In setting the amount of election deposit, the Administration aims to strike a balance between the need to deter frivolous candidates on the one hand, and the need to encourage more public-spirited candidates to participate in elections on the other.

20. The Administration's team has advised that according to information so far available, the current level of election deposit at \$3,000 can be traced back to at least 1994. For the 2003 DCs election, the same level of election deposit will be maintained. The amount is considered to be affordable to candidates. It is also reasonable when measured against the election expense limit for DC elections, which is \$45,000. Further, the deposit will be returned to candidates who are elected or who, though unsuccessful in the election, receive at least 5% of the votes cast in the relevant constituencies. In the 1999 DC elections, only five out of 798 of the candidates had their deposit forfeited.

21. The Administration's team has also pointed out that, between April 1994 and April 2003, the Composite Consumer Price Index has increased by about 10%. Hence, the "real value" of the level of election deposit has decreased over the years. The Administration does not propose to make any adjustment to the level since it still serves the policy objective as described in paragraph 19 above.

22. In response to Hon Cyd HO, the Administration has agreed to conduct further research and provide information on the basis for setting the current level of election deposit to members in due course.

DECLARATION OF CONSTITUENCIES (DISTRICT COUNCILS) ORDER 2003

Purpose of the Order

23. The Order declares areas to be District Council Constituencies (DCCs) and to give names to these constituencies, in accordance with EAC's final recommendations.

Process of public consultation

24. Hon Andrew WONG has referred to a letter written by the Chairman of the Pik Shui Sun Tsuen Mutual Aid Committee and the Village Representatives of the Tai Po Tsai Village to the Chairman of the House Committee on 21 May 2003 opposing to Pik Shui Sun Tsuen and Tai Po Tsai being transferred from Hang Hau East constituency to Hang Hau West constituency. Hon Andrew WONG points out that in the provisional recommendations of EAC on DC constituency areas, Pik Shui Sun Tsuen and Tai Po Tsai were located in Hang Hau East constituency. As they supported the provisional recommendations, they did not make any representations. However, they were subsequently transferred to Hang Hau West constituency in the final recommendations of EAC after EAC had considered representations made by other parties. They were not able to voice their objection to the transfer. Hon Andrew WONG considers that this case has clearly shown that there are problems with the present consultation process.

25. Members of the Subcommittee agree that the independence of EAC should be respected and LegCo should not interfere with the recommendations of EAC on the delineation of constituency areas. Nevertheless, members have requested the Administration's team to explain how the public consultation exercise on demarcation of constituency boundaries in respect of the 2003 DCs election was conducted and how EAC had drawn up its final recommendations.

26. The Administration's team has explained that EAC conducted a public consultation exercise for a period of 30 days from 6 January to 4 February 2003 on its provisional recommendations. In total, EAC received 262 written representations. 72 people attending the two forums expressed their views on the provisional recommendations. Of the representations received, 90 supported EAC's provisional recommendations.

27. In drawing up its final recommendations, EAC adopted the following approach -

- (a) For representations regarding DCCs which were provisionally determined to remain the same as those of the DCCs in 1999 ("unaltered DCCs"), modifications to their boundaries would be considered only if –

- (i) they were supported by cogent reasons and would result in substantial and apparent improvement on community, geographical and development considerations;
 - (ii) they would not in turn affect an unacceptable number of unaltered DCCs;
 - (iii) all the resulting populations would not depart from the population quota by more than 25%; and
 - (iv) no representation supporting the retention of the provisional recommendations in respect of the same unaltered DCCs had been received.
- (b) For representations regarding new DCCs, all suggestions with sufficient cause on better population distribution or on community considerations would be accepted, except those adopting an approach entirely different from the EAC's and affecting an unacceptable number of unaltered DCCs.

28. In the end, EAC adjusted the boundaries of 62 DCCs and changed the names of eight DCCs. EAC submitted its final recommendations to the Chief Executive on 22 April 2003.

29. The Subcommittee has noted that in line with past practice, EAC had appealed through the media to those who had dissenting views to express their opinions, and those who agreed with the provisional recommendations to indicate their support. In addition, the Chairman of EAC had in an open letter particularly appealed to the public to make known to EAC their supporting views for this year's consultation exercise.

30. Referring to EAC's appeal (paragraph 29 above), Hon Andrew WONG does not agree that the absence of any expressed views supporting a provisional recommendation implies that the recommendation could be altered without further consultation. Hon Andrew WONG considers that the parties initially not affected by EAC's provisional recommendations should be given an opportunity to give views if they are subsequently affected by its final recommendations, even though they have not made any representations on the provisional recommendations during the consultation period. The Administration's team has cautioned that such a consultation process would be a never-ending one and had to be carefully considered.

31. Hon Andrew WONG has requested that the present consultation process be reviewed and improved to avoid recurrence of similar incidents in future. He has proposed that EAC, in making provisional recommendations on demarcation

proposals, should set out the reasons for its recommendations, the factors considered, and the possible alternatives to the provisional recommendations, so as to enable the relevant parties to assess whether they should give any views for or against the provisional recommendations during the consultation period. Hon Cyd HO has suggested EAC to make reference to the general guidelines issued by the Administration on how public consultation should be conducted. The Administration's team has agreed to reflect members' views to EAC for consideration.

AMENDMENTS

32. The Administration will move a motion to amend the proposed new section 7(5) of the District Councils (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 at the Council meeting on 18 June 2003 (paragraph 11 above refers). The Administration is preparing the wording of the proposed amendments.

33. As the scrutiny of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 is still continuing, Hon IP Kwok-him, the Chairman of the Subcommittee, will move a motion at the Council meeting on 18 June 2003 to extend the scrutiny period of the Amendment Regulation to the Council meeting on 9 July 2003.

RECOMMENDATION

34. The Subcommittee agrees to support the two items of subsidiary legislation.

ADVICE SOUGHT

35. Members are invited to note the recommendation of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
5 June 2003

**Subcommittee on subsidiary legislation relating to
District Councils election gazetted on 16 May 2003**

Membership list

Chairman	Hon IP Kwok-him, JP
Members	Dr Hon David CHU Yu-lin, JP Hon Cyd HO Sau-lan Hon HUI Cheung-ching, JP Hon Andrew WONG Wang-fat, JP Hon WONG Yung-kan Hon Howard YOUNG, JP Dr Hon YEUNG Sum Hon LEUNG Fu-wah, MH, JP (Total : 9 Members)
Clerk	Mrs Percy MA
Legal Adviser	Mr Arthur CHEUNG
Date	30 May 2003