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***Legislative Council***

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**Paper for the House Committee meeting on 27 June 2003**

**Second 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 Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 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. The Subcommittee held its first meeting on 30 May 2003 and Hon IP Kwok-him was elected Chairman. The membership list of the Subcommittee is in the **Appendix**. The Subcommittee made its first report to the House Committee on 6 June 2003 on the deliberations of the District Councils (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003, and the Declaration of Constituencies (District Councils) Order 2003.

## **Deliberations of the Subcommittee**

4. In order to allow more time for the Subcommittee to study the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003, Hon IP Kwok-him moved a motion at the Council meeting on 18 June 2003 to extend the scrutiny period of the Regulation to 9 July 2003. The motion was passed by the Council.

5. The deliberations of the Subcommittee on the Regulation are summarized in the following paragraphs.

## **Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003**

### Purpose of the Amendment Regulation

6. The Amendment Regulation seeks to -

- (a) provide for the counting of votes at individual polling station after the close of poll;
- (b) improve the existing provisions on the handling of questionable ballot papers so that ballot papers that are clearly invalid need not be treated as questionable, as is required under the existing provision; and
- (c) make other necessary amendments to streamline the electoral arrangements.

### Vote counting arrangements

#### *Existing arrangements*

7. Under existing arrangements, after the close of poll, ballot boxes at individual polling stations are delivered to district counting stations where the counting of votes will take place. There is a district counting station for each District with a number of counting zones. The entire counting process for each constituency in the District will be conducted in one counting zone. If more than one polling station is used for polling for a constituency, ballot papers from two or more polling stations must be mixed before counting.

#### *Proposed vote counting arrangements*

8. Electoral Affairs Commission (EAC) proposes to adopt decentralized counting arrangement in the 2003 DCs election such that counting of votes will be carried out in polling stations after the close of poll. The proposed counting arrangement should enable election results to be declared earlier.

9. Details of the counting arrangement are as follows. Immediately after the close of poll, a polling station will be converted into a counting station and the count will be performed by the polling staff. During the conversion, the candidates and their agents will be allowed to be present to observe the conversion. The Presiding Officer (PrO), who is also the official in charge of the operation of the polling station during the day, will take up the role of supervising the counting of votes which in previous elections was a responsibility of the Returning Officer (RO).

10. For a constituency which has only one polling station, counting will be conducted at the station. Upon completion of vote counting, PrO will make known the counting result to the candidates and their agents present at the polling station. Candidates or their election agents may request a re-count, if such is considered necessary. After obtaining the final counting or re-count result, PrO will make known the result to the candidates and their agents present at the polling station. He will also inform RO of the constituency of the result, who will then formally declare the result.

11. For a constituency with two or more polling stations, counting will be performed at individual polling stations. The polling station serving the largest number of registered electors will be designated by the Chief Electoral Officer (CEO) as the dominant counting station. Candidates may appoint no more than two counting agents for each counting station to monitor the counting of votes. RO will check the overall final counting or re-count results obtained from PrO of the dominant counting station against all the results obtained from individual counting stations to ensure accuracy of the final result for the constituency. RO will then formally declare the result.

12. Hon Andrew WONG has pointed out that under section 76(2) of the principal Regulation, where more than one polling station is used for polling for a constituency, ballot papers from two or more polling stations must be mixed before counting the votes in respect of the constituency. He considers that the arrangement for mixing ballot papers from two or more polling stations within a constituency is an important principle which should not be compromised for the efficiency of the vote counting process. This long-standing arrangement would safeguard the integrity of the electoral process within a constituency, and minimize the chance of intimidation and reprisals, or other corrupt conduct at elections. A few members concur with Hon Andrew WONG and consider that a balance should be struck between protection of secrecy of votes and earlier declaration of election results. Hon WONG Yun-kan has expressed concern about those polling stations with small number of registered electors and suggested that ballot papers from small polling stations within a constituency should be mixed before counting.

13. The Subcommittee agrees that the proposal on vote counting arrangements has policy implications and has requested the Administration to reconsider the matter taking into account members' views.

*Modified vote counting arrangements*

14. The Administration has advised the Subcommittee that EAC has reviewed the proposed arrangement in the light of members' views. EAC is satisfied that secrecy of vote will not be compromised under the new arrangement. However, in the light of members' comments, modified vote counting arrangements will be made for polling stations with less than 200 registered electors.

15. According to the Administration, in the 1999 DCs election, there were 314 constituencies and 430 polling stations. 230 constituencies had one polling station, and 84 constituencies had two or more polling stations. There were seven polling stations with less than 200 registered electors, of which six had less than 100 registered electors.

16. Under the modified proposal, where a polling station has less than 200 registered electors (small polling stations), the ballot papers cast at the polling station will be delivered to another polling station within the same constituency for counting. The aggregate number of registered electors of the polling stations concerned will be at least 200. The detailed arrangements will be as follows –

- (a) where a constituency has one or more small polling stations, CEO will designate one polling station in the constituency as the main polling station, to which ballot papers of all the small polling station(s) in the constituency will be delivered for counting;
- (b) after the close of poll, PrO of the small polling station will prepare a ballot paper account, seal the ballot box and deliver it to PrO of the main polling station;
- (c) likewise, PrO of the main polling station will prepare a ballot paper account and seal the ballot box after the close of poll. The main polling station will then be converted into a main counting station;
- (d) after the conversion, PrO of the main counting station will open the sealed ballot box for his station in front of the candidates and their agents (if present), count the votes in the ballot box, and verify whether the number tallies with the ballot paper account. He will then repeat the same steps for the ballot boxes of each of the small polling stations;
- (e) PrO of the main counting station will mix the ballot papers of the main and the small polling stations, and then sort and count the votes in accordance with the procedures provided for in sections 76 to 80 of the Amendment Regulation;

- (f) after obtaining the final counting (or re-counting) results, PrO of the main counting station will report the results to PrO of the dominant counting station who will be responsible for tallying the overall total number of votes in the constituency and reporting the results to RO. If the main counting station is itself the dominant counting station, PrO will report the results to the RO of the constituency direct.

17. The majority of the members consider the modified vote counting arrangements acceptable. Hon Andrew WONG does not accept the modified proposal and remains of the strong view that ballot papers from two or more polling stations within a constituency must be mixed before counting, irrespective of the number of registered electors in the polling stations. Otherwise, the integrity of the electoral process within a constituency would be compromised.

18. At the Subcommittee meeting on 9 June 2003, Hon Andrew WONG proposed to invite the Secretary for Constitutional Affairs (SCA) to attend the following meeting of the Subcommittee. He considered that SCA, the principal official responsible for the relevant policy portfolio, and not civil servants in his bureau, should explain the reasons for introducing major policy changes relating to vote counting arrangements for constituency with more than one polling station. The Administration saw no need for SCA to attend the meeting as the reason for the proposed counting arrangement had been explained in detail. Besides, the Panel on Constitutional Affairs had also been consulted on the original proposal and members were generally in support of it. Hon IP Kwok-him, Chairman of the Subcommittee, considered that policy issues should be discussed by the relevant Panel. In the end, Mr WONG's proposal was put to vote. As there was a tie vote, Hon IP Kwok-him declared that Mr WONG's proposal should not be proceeded with as it did not receive the majority support of the Subcommittee.

#### *Monitoring of vote counting*

19. Hon Cyd Ho has proposed that video camera facilities should be installed in a central station for the purpose of monitoring the vote counting process at individual counting stations. The Administration has explained that arrangements are in place to ensure the whole vote counting process will be open and transparent. The financial implications and technical feasibility of the proposal would need to be carefully considered. Miss HO has requested the Administration to seriously consider implementing the proposal for future public elections.

#### Handling of questionable ballot papers

##### *Existing arrangements*

20. The Administration has informed the Subcommittee that at present, a ballot paper is set aside as a questionable ballot paper if -

- (a) it is endorsed on the front with the word “TENDERED”;
- (b) it is endorsed on the front with the word “SPOILT”;
- (c) it is unused;
- (d) it is unmarked;
- (e) it is not marked by the chop provided;
- (f) votes are given for more than one candidate;
- (g) the chop on it is not affixed to give a single “✓ ” in the circle opposite the name of the candidate of the elector’s choice;
- (h) there is writing or a mark by which the elector can be identified;
- (i) it is substantially mutilated; or
- (j) the elector’s intention is uncertain.

RO will decide whether a questionable ballot paper should be counted. A candidate or his election agent may raise objection to the admission or rejection of a questionable ballot paper. The decision of RO on whether a ballot paper should be counted is final and may be questioned only by an election petition.

*EAC's proposal*

21. Following the decentralization of vote counting to individual polling stations, EAC has proposed that PrO, as the official in charge of the operation of the polling station during the day, will take up the role of determining questionable ballot papers, which in previous elections was a responsibility of the RO.

22. To further enhance the efficiency of the vote counting process, EAC has proposed to amend the law to provide for the ballot papers under categories (a) to (f) in paragraph 20 be regarded as invalid and not be counted. They will not be subject to the objection of candidates or their agents. Ballot papers under categories (g) to (j) in paragraph 20 will continue to be treated as questionable ballot papers and dealt with according to existing procedures. Candidates or their election agents or counting agents may raise objection to the admission or rejection of these ballot papers. PrO will be responsible for making a final decision on their validity.

*Justifications of EAC's proposal*

23. The Administration has explained that although all ballot papers under categories (a) to (j) are regarded under law as questionable ballot papers, those under categories (a) to (f) in paragraph 20 are by their nature clearly invalid.

Under the existing law, all ballot papers under categories (a) to (f) were questionable and must be determined one by one by RO. This has prolonged the counting process. The ballot papers under categories (a) to (f) constituted more than 86% of all questionable ballot papers in the 1999 DCs election. In fact, no objections have ever been raised to these categories of ballot papers being ruled invalid by RO in past elections. The truly questionable ballot papers under categories (g) to (j) averaged only 1.7 ballot papers per polling station.

24. The Administration has also advised the Subcommittee that sufficient safeguards are provided to ensure that the principle of open, fair and honest election will continue to be upheld. First, the whole vote counting process will continue to be open and transparent. Candidates, their election agents and counting agents will be allowed to observe the process from a close distance in the vote counting zone. Members of the public are also allowed to observe the process inside the counting station.

25. Secondly, before the counting of votes, PrO is required to prepare a statement to account for all ballot papers under the following heads -

- (a) the number of ballot papers estimated to be in the ballot box;
- (b) the number of un-issued ballot papers;
- (c) the number of unused ballot papers; and
- (d) the number of spoilt ballot papers.

After the counting of votes, PrO will verify the number of ballot papers counted by comparing it with the ballot paper account prepared before vote counting. Besides, a statement of the ballot papers which have not been counted will also be prepared, including all those falling under categories (a) to (f) and those under categories (g) to (j) which have been examined and determined by the PrO as invalid (uncounted). The statement will set out the total number of invalid (uncounted) ballot papers, with sub-total of invalid ballot papers under each of categories (a) to (j). Thus, as in the past, the number of ballot papers counted and not counted will be verified and there is a clear record of the number of different categories of ballot papers which have not been counted. The counted and invalid (uncounted) papers will also be made up into separate sealed packets and kept in custody by the CEO for at least six months from the date of the election.

*Authority of determining questionable ballot papers under categories (g) to (h)*

26. Hon Andrew WONG considers that the ballot papers under categories (a) to (f) should not be regarded as invalid and should be counted. He points out that although the number of these ballot papers is large, they are usually very straightforward. Mr WONG has reservations about the proposal for PrO to be

responsible for making a decision on the validity of ballot papers under categories (g) to (j). In view of the large number of PrOs following the decentralization of vote counting to individual polling stations, Mr WONG has expressed concern about their experience in electoral/counting duties and consistency in making decisions on the validity of questionable ballot papers. He considers that the decision on validity of ballot papers under categories (g) to (j) should continue to rest with RO. In any event, the number of such questionable ballot papers is expected to be few in the light of past experience. However, in order not to prolong the counting process, Mr WONG has suggested that any ballot papers under categories (g) to (j) that have been identified during the counting process could be put aside for the decision of RO and legal advisers after the count is completed. In view of the small number of these questionable ballot papers, it is unlikely that they will affect the election result. Hon Cyd HO agrees with Hon Andrew WONG.

27. The Administration has explained that the delegation of the responsibility for determining questionable ballot papers from RO to PrO will enable the decision to be made efficiently at the counting station on the spot. All PrOs are experienced officers at the middle management level in the civil service, and have considerable public administration experience. Many will also have taken up electoral/counting duties in previous elections. Further, they will receive proper training by EAC. PrOs can make reference to a set of clear guidelines and samples of past ballot papers (with valid and invalid) in determining the validity of questionable ballot papers. Where necessary, PrOs may seek legal advice before making a decision. Although the legal advisers will station in the office of ROs, they will travel to the counting stations if on the spot advice is considered necessary.

28. The Administration maintains the view that entrusting PrOs to take up the responsibility of determining the validity of questionable ballot papers will not affect the openness or fairness of the electoral process. Any person who is discontented with a PrO's decision may lodge an election petition. If the responsibility of determining questionable ballot papers were to remain with the RO, the vote counting process would be delayed, and the purpose of decentralizing vote counting to individual polling stations defeated.

#### Other revised electoral arrangements

##### *Proposed new section 56A (section 10 of the Amendment Regulation)*

29. Under the proposed new section 56A(1), an elector who has been issued with a ballot paper but has left the polling station without casting his vote, shall not cast the vote before the close of the poll, unless before leaving the polling station, he has,



- (a) made a request to PrO for permission to return to the polling station to cast the vote before the close of poll;
- (b) informed PrO of his reason for leaving the polling station;
- (c) returned the ballot paper, unmarked, to PrO; and
- (d) obtained PrO's permission.

30. The Administration has explained that the proposed new section 56A provides for the procedures to follow in situations where an elector, after being issued with a ballot paper, has to leave the polling station. For example, an elector who has become incapacitated due to physical illness and must leave the polling station. Under such an emergency scenario, the elector may not be able to fulfil the requirements in the proposed new section 56A(1). New section 56A(5) enables the elector to return to the polling station afterwards to cast his vote, subject to certain requirements.

31. Members have asked whether PrO has any discretion under the proposed new section 56A(1). The Administration has advised that PrO must grant permission for an elector to leave the polling station and return later unless he is of the opinion that the request is a manifest abuse of the facilities provided.

32. To improve the clarity of the provision, the Administration will amend "becomes incapacitated" in the proposed new section 56A(5)(b) to "has become incapacitated".

*Other proposed changes*

33. The Subcommittee has noted that the following changes will also be introduced to streamline electoral arrangements -

- (a) a candidate may appoint not more than two counting agents for each counting station to monitor the counting of votes (section 13 of the Amendment Regulation). The existing Regulation provides that the EAC may determine the maximum number of counting agents that a candidate may appoint;
- (b) PrO may be authorized by RO to vary the no canvassing zone and the no staying zone on polling day by displaying a notice at or near the polling station (section 33 of the Amendment Regulation);
- (c) candidates will be required to furnish copies of election advertisements and authorization to ROs before they display the election advertisements (section 38 of the Amendment Regulation). The existing Regulation only requires candidates to provide the

copies not later than 7 days after the display, and this has sometimes caused difficulties for ROs in dealing efficiently with complaints relating to advertisements which have been displayed; and

- (d) candidates will not be required to provide the registered residential address of their subscribers on the nomination papers (section 3 of the Amendment Regulation). It is considered that subscribers' identity card numbers are already sufficient in helping RO to determine the eligibility of the subscribers and the validity of the subscriptions.

### **AMENDMENTS**

34. The Administration will move a motion to amend the Amendment Regulation to give effect to the modified vote counting arrangements and other minor changes at the Council meeting on 9 July 2003. A copy of the draft resolution of the Administration will be provided to Members once available.

35. Hon Andrew WONG has given notice to move a motion to repeal the Regulation at the same Council meeting.

### **RECOMMENDATION**

36. The Subcommittee supports the Amendment Regulation and the amendments proposed by the Administration.

### **ADVICE SOUGHT**

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

Council Business Division 2  
Legislative Council Secretariat  
26 June 2003

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

**Membership list**

<b>Chairman</b>	Hon IP Kwok-him, JP
<b>Members</b>	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)
<b>Clerk</b>	Mrs Percy MA
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	30 May 2003