

立法會
Legislative Council

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Paper for the House Committee meeting

**Final report of the Subcommittee on subsidiary legislation
relating to Village Representative elections**

Purpose

This paper reports on the deliberations of the Subcommittee on subsidiary legislation relating to Village Representative elections on the Village Representative (Election Petition) Rules.

Background

2. The Village Representative Election Ordinance (Cap. 576) was gazetted and came into operation on 14 February 2003, except for certain provisions which will come into operation on 1 October 2003. The Ordinance provides a legal framework for the conduct of the 2003 Village Representative (VR) elections as well as VR elections in subsequent years. The elections will be conducted under the supervision of the Electoral Affairs Commission.

3. To implement the VR elections, the following five sets of subsidiary legislation have been introduced for negative vetting by the Legislative Council -

- (a) Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (gazetted on 15 February 2003);
- (b) Village Representative Election (Registration of Electors) (Appeals) Regulation (gazetted on 21 February 2003);
- (c) Maximum Amount of Election Expenses (Village Representative Election) Regulation (gazetted on 28 March 2003);
- (d) Electoral Procedure (Village Representative Election) Regulation (gazetted on 28 March 2003); and

- (e) Village Representative (Election Petition) Rules (gazetted on 6 June 2003).

Village Representative (Election Petition) Rules

4. Section 39 of the Village Representative Election Ordinance sets out specific grounds on which election may be questioned by election petitions. Section 40 of the Ordinance provides that an election petition questioning a VR election may be lodged -

- (a) by five or more electors entitled to vote at the election; or
- (b) by a person claiming to have been a candidate at the election.

5. Section 66 of the Ordinance empowers the Chief Justice to make rules to set out the arrangements for election petitions relating to VR elections.

6. According to the Administration, the Village Representative (Election Petition) Rules are basically modelled on the District Councils (Election Petition) Rules (Cap. 547, sub. leg. C), relating to the arrangement for election petitions regarding District Council (DC) elections. The Administration has informed the Subcommittee that the main differences of VR election petitions from DC election petitions are as follows -

- (a) the Director of Home Affairs (DHA) shall, after receiving a copy of the election petition, display it on the notice board at the appropriate District Office (DO) instead of at the regular place of meetings of the DC concerned; and
- (b) references to the rights of the petitioner and the respondent to be represented by lawyers during a trial of an election petition are omitted.

The Subcommittee

7. The House Committee agreed at its meeting on 21 February 2003 to form a Subcommittee to study the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation. The House Committee further agreed at its meeting on 28 February 2003 that the Subcommittee should be responsible for studying all items of subsidiary legislation relating to VR elections which had been or would be introduced.

8. The Subcommittee held its first meeting on 3 March 2003 and Hon Andrew WONG was elected Chairman. The membership of the Subcommittee is in **Appendix I**. The Subcommittee had already completed scrutiny of the four Regulations referred to in paragraph 3(a) to (d) above, and reported to the House Committee accordingly.

Deliberations of the Subcommittee

9. The Subcommittee has completed scrutiny of the Election Petition Rules and the main deliberations of the Subcommittee are summarized in the following paragraphs.

Display of election petition

10. Heung Yee Kuk (HYK) has made a submission to the Subcommittee. Members note HYK's suggestion that as the result of an election petition regarding a VR election may affect the Rural Committee (RC) and the Village concerned, section 5(4) of the Rules should be amended to the effect that DHA shall, after receiving a copy of the election petition, display it in a conspicuous place in the RC and village office concerned, in addition to displaying it on the notice board at the appropriate DO. HYK has also suggested that if there is no village office in the Village concerned, DHA shall display the election petition on a notice board in that Village.

11. Members in general are supportive of HYK's suggestions. They are of the view that displaying the copy of the election petition in the RC and village office concerned will ensure that the villagers who may be affected will be aware of the election petition. Moreover, as the Rules are modelled on the District Councils (Election Petition) Rules, the arrangements for the display of DC election petitions should be adopted for that of VR election petitions. Members therefore consider that DHA should also display the copy of VR election petition received in the offices of the RCs concerned which are the regular places of meetings of the RC.

12. In response, the Administration informs the Subcommittee that to enhance public awareness of the development at various stages of VR elections, the Administration has all along publicized relevant information at its DOs, as well as the offices of RCs and village offices, as appropriate, and subject to the agreement of the latter organizations. The suggestions of HYK are in line with the Administration's arrangements. The Administration explains that it has not set out the arrangements in the legislation so that more flexibility would be allowed in increasing the avenues for dissemination of information, where available. In addition, the Administration is concerned that there might be difficulties in meeting the legislative requirements in case some RCs may not

be willing to give their consent for copies of election petitions to be displayed at their offices.

13. Hon Albert CHAN has asked whether the election petition procedure will be considered void when DHA is unable to comply with the proposed statutory requirement by arranging for the display of a copy of an election petition at the offices of RCs, if the RC concerned has refused to co-operate. Members note that if DHA has already tried his best in fulfilling the requirement but has failed to do so, the legal effect of the election petition procedure will not be affected because of such failure.

14. Most members consider it unlikely that RCs may raise objection to the display of copies of election petitions at their offices. Moreover, if the requirement is stipulated in the Rules, RCs will be bound to comply and hence will help prevent possible disputes over the display of election petitions.

15. To allow flexibility for the Administration in making the arrangements, members suggest that the Administration should make reference to relevant provision of the District Councils (Election Petition) Rules and amend section 5(4) of the Village Representative Election (Election Petition) Rules to the effect that DHA shall also display the copy of the election petition received in a conspicuous space on or near the outer door of the office of RC concerned. They consider that the Administration can make necessary administrative arrangement to arrange for the display at the village office concerned and the notice board in the Village concerned as appropriate. The Administration has agreed to move a resolution at the Council meeting on 9 July 2003 to amend the Rules accordingly. Members have also suggested HYK to advise RCs of the statutory requirement as proposed.

Lodgement of election petition

16. Hon Albert CHAN considers the requirement of five registered electors to lodge election petition under section 40 of the Principal Ordinance unreasonable. He points out that the total number of registered voters in some Villages is so small or even less than five that the requirement will deprive the right of the electors in these villages to lodge election petitions. The Administration explains that on the basis of the comments made by members of the Bills Committee on Village Representative Election Bill, the number of electors required for lodging election petitions under the provision has been reduced from ten to five, and any change to the number will require an amendment to the Principal Ordinance. In the light of Mr CHAN's comment, the Administration has undertaken to review the requirement in the comprehensive review to be conducted after 2003 VR elections.

Legal representation for a petitioner and a respondent

17. In response to some members' enquiries, the Administration has confirmed that a petitioner or respondent has the right to legal representation under the Election Petition Rules, although it has not been so specified. The Administration explains that the references have been omitted in the Rules because it is considered that the rights to be represented by lawyers and the rights to examine and cross-examine witnesses are an implied part of all court proceedings. The fact that such rights are not expressly stated in the Rules does not mean that they do not exist in such court proceedings.

18. Dr Hon TANG Siu-tong and Hon Albert CHAN are, however, of the view that as references to the right to legal representation are explicitly stated in the District Councils (Election Petition) Rules, it should also be so stated in the Election Petition Rules for the avoidance of any doubt and misunderstanding.

19. The Administration stresses that efforts are made to improve the drafting of legislation so that it would be as precise and concise as possible. Since the rights of the petitioner and respondent to be represented by lawyers are an implied part of all court proceedings, the Administration does not consider such references as found in the District Councils (Election Petition) Rules must be retained in the Election Petition Rules. The Administration has also quoted the Bankruptcy Rules (Cap. 6 sub. leg. A) and the Commissions of Inquiry Ordinance (Cap. 86) as examples of other legislation in which such a basic right is not expressly stated in the legislation. The Administration further informs members that the Chief Justice of the Court of Final Appeal has been consulted who is satisfied with the Rules as gazetted.

Cost of election petition

20. Section 44 of the Village Representative Election Ordinance stipulates that a petitioner shall give security not exceeding \$20,000 for all costs that may become payable by him to any witness who gives evidence in the proceedings on his behalf or to any respondent. Dr Hon TANG Siu-tong and Hon Albert CHAN consider that the maximum amount is too large and is disproportionate to the scale of VR elections. They point out that such cost is not affordable to most of the villagers. Hon LAU Wong-fat, however, opines that the maximum amount of security stipulated in the Village Representative Election Ordinance is appropriate and should be retained so as to prevent any abuse of the petition mechanism.

21. Dr Hon TANG Siu-tong and Hon Albert CHAN also point out that section 42 of the Village Representative Election Ordinance provides the Court of First Instance with the jurisdiction in respect of an election petition. As the

petitioner and the respondent may be represented by lawyers at the trial of an election petition, the costs of the petition will further be escalated, hence deterring villagers from lodging election petitions. These members consider that with the small scale of a VR election for a Village, the election petition should be heard by a quasi-judicial body similar to the Labour Tribunal or Small Claims Tribunal.

22. In response to the members' concerns about the legal cost of lodging an election petition and the amount of security to be given, the Administration explains that the amount of security to be given by a petitioner will be directed by the Court. \$20,000 is the maximum level of security costs, which is the same as that for DC election petition. However, the exact amount will be determined by the Court. The Administration further explains that since VR elections are open and statutory elections, a fair and open petition mechanism with proper legal proceedings and trial in open court has to be provided for the parties concerned. As the issues will involve amendments to the Principal Ordinance, the Administration has undertaken to examine the issues raised by members in the comprehensive review to be conducted after the 2003 VR elections.

Follow-up actions by the Administration

23. The Administration has undertaken -
- (a) to take into consideration the number of registered voters in individual Villages in the 2003 VR elections and review the minimum number of electors for lodging an election petition under section 40 of the Village Representative Election Ordinance (paragraph 16 above refers);
 - (b) to review the maximum amount of security to be given by a petitioner under section 44 of the Ordinance (paragraph 22 above refers); and
 - (c) to review the appropriate level of judicial/quasi-judicial bodies with which the jurisdiction in respect of an election petition should be vested (paragraph 22 above refers).

Recommendation

24. The Subcommittee recommends that the Village Representative (Election Petition) Rules be amended as discussed in paragraph 15 above. The proposed resolution to amend the Rules is in **Appendix II**.

Advice sought

25. Members are invited to note the Subcommittee's deliberations and the recommendation of the Subcommittee in paragraph 24 above.

Council Business Division 2
Legislative Council Secretariat
2 July 2003

**Subcommittee on subsidiary legislation relating to
Village Representative elections**

Membership List

Chairman Hon Andrew WONG Wang-fat, JP

Members Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP

(Total : 9 Members)

Clerk Miss Flora TAI Yin-ping

Legal Adviser Mr Stephen LAM Ping-man

Date 3 March 2003

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses Ordinance (Cap. 1)

VILLAGE REPRESENTATIVE (ELECTION PETITION) RULES

RESOLVED that the Village Representative (Election Petition) Rules, published in the Gazette as Legal Notice No. 151 of 2003 and laid on the table of the Legislative Council on 11 June 2003, be amended in section 5(4) by adding "and in a conspicuous place on or near the outer door of the building in which the office of the Rural Committee is situated" after "Ordinance".