

**Subcommittee on subsidiary legislation relating to
District Council elections gazetted on 16 May 2003**

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

Handling of Questionable Ballot Papers

Introduction

This note addresses Members' questions raised at the meeting on 30 May 2003 relating to the proposed arrangements for handling questionable ballot papers.

Handling of Questionable Papers

2. As the law now stands, 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.

3. The Returning Officer (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, but the final decision rests with the RO.

4. By their nature, ballot papers which fall under categories (a) to (f) are clearly invalid. In practice, there should be no room for dispute as to how these categories of ballot papers should be treated. Indeed, in past elections, no objections have ever been raised to these ballot papers being ruled invalid by the RO. However, because they are now by law classified as questionable ballot papers, these papers have to be individually examined and determined by the RO. This has prolonged the counting process.

5. To enhance the efficiency of the vote counting process, we consider that a better arrangement would be to amend the law to provide that ballot papers under categories (a) to (f) are invalid. They will then no longer have to be individually determined by the RO, a process which (as explained above) is mechanical and time consuming. The measures and arrangements outlined below provide sufficient safeguard to ensure that the principle of open, fair and honest election will continue to be upheld.

6. 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.

7. Secondly, before the counting of votes, the Presiding Officer (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 spoiled ballot papers.

After the counting of votes, the 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 Chief Electoral Officer for at least six months from the date of the election.

Authority of Determining Questionable Ballot Papers

8. Following the decentralization of vote counting to individual polling stations, the 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. At the last meeting, a Member suggested that the decision on the validity of questionable ballot papers should continue to rest with the RO.

9. The delegation of the responsibility for determining questionable ballot papers from the RO to the 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. Generally, they will have worked in Government for about 15 years or so, and so will have considerable public administration experience. Many will also have taken up electoral/counting duties in previous elections. Further, they will receive proper training by the Electoral Affairs Commission. When they examine and determine the validity of questionable ballot papers, the PrOs can make reference to a set of clear guidelines and samples of past ballot papers (with valid and invalid). For transparency, the samples will be posted up in the counting stations. Where necessary, the PrOs may seek legal advice before making a decision. The legal advisers will be stationed in the office of the ROs, but will travel to the counting stations if on the spot advice is considered necessary.

10. Members may also wish to note for reference that for the 1999 DC elections, the number of questionable ballot papers which fall under categories (g) to (j) above averaged only at 1.72 per counting station.

11. Against the above background, we believe 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 discontent with a PrO's decision may lodge an election petition.

12. 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.

Constitutional Affairs Bureau
31 May 2003

MC0378