

立法會

Legislative Council

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Paper for the House Committee meeting on 30 January 2004

First report of the Subcommittee on subsidiary legislation relating to 2004 Legislative Council elections

Purpose

This paper reports on the deliberation of the Subcommittee on Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation.

Background

2. After the 1998 Legislative Council (LegCo) elections, the Electoral Affairs Commission (EAC) received a suggestion from a number of political parties and individuals that a candidate should be allowed to have his emblem (or the name and emblem of the organization to which he belongs) printed on ballot papers in future LegCo elections to facilitate identification by electors.

3. Following public consultation in June 1999, EAC made the Electoral Affairs Commission (Printing of Name of Organization and Emblem on Ballot Paper) (Legislative Council) Regulation (L.N. 306 of 1999). This Regulation was published in the Gazette on 10 December 1999, and subsequently repealed by LegCo on 19 January 2000 due to reservations made by some Members on certain detailed features of the scheme.

4. To prepare for the 2004 LegCo election, the Administration asked EAC to re-examine the proposed scheme in the light of the past comments made by Members. On 10 December 2003, EAC made the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation under section 7 of the Electoral Affairs Commission Ordinance (Cap. 541).

Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation (the Regulation)

5. The Regulation provides procedures for printing specified particulars relating to candidates on the ballot paper for use in elections. These include

registered names and emblems of prescribed bodies, registered emblems of prescribed persons, words indicating that a candidate is an independent candidate or a non-affiliated candidate, and personal photographs of candidates.

The Subcommittee

6. At the House Committee meeting on 19 December 2004, Members agreed to form a subcommittee to examine the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation. At the House Committee meeting on 9 January 2004, Members agreed that the Subcommittee formed should be responsible for examining other items of subsidiary legislation relating to the 2004 LegCo elections to be gazetted within the session. The membership of the Subcommittee is in **Appendix I**.

7. Under the chairmanship of Hon HUI Cheung-ching, the Subcommittee has held two meetings with the Administration to discuss the Regulation.

Deliberation of the Subcommittee

Printing of particulars relating to candidates on the ballot paper

8. The Schedule to the Regulation sets out the particulars relating to candidates which may be printed on the ballot paper -

- (a) the registered Chinese/English name or the registered abbreviation of the Chinese/English name (but not both) of a prescribed body;
- (b) the words "Independent Candidate" or "Non-affiliated Candidate" (but not both);
- (c) the registered emblem of a prescribed body; and
- (d) the registered emblem of a prescribed person.

9. The Subcommittee has noted that under section 2, "prescribed body" is defined to mean a prescribed political body or a prescribed non-political body. "Prescribed person" is defined to mean a person that is registered in a final register of electors for geographical constituencies as compiled and published in accordance with the Legislative Council Ordinance and that is not disqualified from being so registered or from voting at an election.

10. In response to members' request for clarification, the Administration has explained the particulars which a candidate or candidate list may be allowed to print on the ballot paper. For a candidate (i.e. a functional constituency candidate

or a sole candidate on a nomination list), he may request for the printing of the following particulars on the ballot paper -

- (a) a personal photograph of the candidate; and
- (b) the registered name/emblem relating to one prescribed body; or
- (c) the words "Independent Candidate" or "Non-affiliated Candidate" and/or the registered emblem of the candidate.

11. For a nomination list which consists of two candidates, the candidates may request for the printing of the following particulars on the ballot paper -

- (a) a personal photograph of one or both of the candidates on the list; and
- (b) not more than two registered names/emblems of prescribed bodies; or
- (c) the words "Independent Candidate" or "Non-affiliated Candidate" and/or not more than two registered emblems of candidates on the nomination list concerned; or
- (d) a combination of not more than two registered names/emblems of prescribed bodies and registered emblems of candidates on the nomination list concerned.

12. As regards a nomination list which consists of three or more candidates, the candidates may request for the printing of the following particulars on the ballot paper -

- (a) a personal photograph of any one or more of the candidates on the list; and
- (b) not more than three registered names/emblems of prescribed bodies; or
- (c) the words "Independent Candidate" or "Non-affiliated Candidate" and/or not more than three registered emblems of candidates on the list; or
- (d) a combination of not more than three registered names/emblems of prescribed bodies and registered emblems of candidates on the nomination list concerned.

13. Hon Audrey EU is of the view that a candidate, irrespective of whether he is the sole candidate on the list or one of the candidates on the list, should be allowed the flexibility to print up to three names/emblems on the ballot paper. After consideration, the Administration has advised that EAC is prepared to allow each candidate or candidate list (as the case may be) to print on the ballot paper up to three emblems, and the names or abbreviations of three prescribed bodies, subject to the application provisions in the Regulation.

The terms "Independent Candidate" or "Non-affiliated Candidate"

14. Members have discussed the proposal of allowing candidates the flexibility to request to have the words "Independent Candidate" or "Non-affiliated Candidate" printed on the ballot paper. Some members consider that the proposal would cause confusion to electors as the two terms carry the same meaning, and have suggested that the term which is more commonly acceptable within the community should be adopted.

15. The Administration has explained that the provision follows a suggestion made by the Panel on Constitutional Affairs when it was briefed on the main features of the Regulation at its meeting on 20 October 2003. The provision is also a reflection of practices adopted by some candidates in recent elections, and the two terms should not be unfamiliar to voters. The Administration has also advised that EAC considers that candidates should be given the greatest possible flexibility on how they prefer to describe their political affiliation on the ballot paper. Candidates should have taken account of the likely public perception when they decide how they would wish to position themselves in an election campaign.

Political affiliation of candidates

16. Some members have sought clarification on whether a candidate who has no political affiliation could choose not to describe himself as "Independent Candidate" or "Non-affiliated Candidate" on the ballot paper. The Administration has advised that it would be for a candidate to decide whether he would describe himself as "Independent Candidate" or "Non-affiliated Candidate", or not to use either of the terms on the ballot paper.

17. Some members have asked whether a candidate who, having declared that he is a member of a political party on the nomination form, but subsequently describes himself as "Independent Candidate" or "Non-affiliated Candidate" on the request form for printing of particulars on the ballot paper, would commit an offence of false statement under section 35 of the Regulation or any other laws.

18. Hon SIN Chung-kai considers that EAC should have a role in ensuring consistency in information on political affiliation provided by candidates on the nomination form and the request form for printing of particulars on the ballot paper. Hon IP Kwok-him is of the view that a candidate belonging to a political

party could choose not to declare his political affiliation on both the nomination form and request form. However, any inconsistency in information provided by the candidate on the two forms is unacceptable. Hon Howard YOUNG has pointed out that the situation of a candidate who has certain political affiliation and chooses not to declare the political affiliation is different from the situation where he chooses to describe himself as "Independent Candidate" or "Non-affiliated Candidate". In his view, the candidate in the latter scenario would commit an offence of false statement.

19. The Administration has explained that the design of the scheme is to provide a self-declaration arrangement so as to allow a candidate to choose how he prefers to describe his political affiliation on the ballot paper. The Regulation does not require EAC to enquire, when processing a request, into the candidate's political affiliation, since it would not be desirable for EAC to be perceived as playing a vetting role in this respect. If a candidate has certain political affiliation, but chooses to describe himself as "Independent Candidate" or "Non-affiliated Candidate", it will be for the candidate, if asked by the electors or the general public, to explain his decision.

20. Having considered members' views, the Administration has advised that the Registration and Electoral Office (REO) will check a request from the candidate against the information on political affiliation (if applicable) provided by the candidate on his nomination form. REO will draw the candidate's attention to any inconsistency between the two sets of information and ask him to rectify it.

21. The Administration has further advised that in the event that a complaint is made that a candidate has acted in breach of section 35 of the Regulation, the complaint will be handled on its merits, taking into account the facts and circumstances of the case.

Application for registration of name and emblem by a prescribed body

22. The Subcommittee has noted that under section 8 of the Regulation, a prescribed body intending to support a candidate in a LegCo election may apply to EAC for the registration of all or any of the following particulars -

- (a) the Chinese name of the body and its abbreviation;
- (b) the English name of the body and its abbreviation; and
- (c) an emblem of the body.

23. An application must be made in the specified form and signed by the applicant. It must contain the name and address of the applicant and the subject of the application. It must indicate that the applicant is a prescribed political body or a prescribed non-political body and that the applicant intends to consent to the

subject of application being printed on a ballot paper as particulars relating to one or more persons as candidates. The application must also be accompanied by a copy of the relevant certificate of the applicant.

24. The Administration has explained that "the relevant certificate" is defined under the Regulation to mean a certificate or document issued to the body by an authority or regulatory organization that regulates the body under the laws of Hong Kong and showing the name of the body, e.g. a certificate issued under the Societies Ordinance or the Companies Ordinance. The Administration has explained that EAC would verify the name of the applicant against the certificate and would approve the application of a prescribed body for registration of the name as shown on the relevant certificate.

Timeframe for processing applications

25. Under section 11, EAC must process any application made by a prescribed body or a prescribed person for registration of names, abbreviations and emblems in any annual registration cycle -

- (a) if the application is made on or before the relevant cut-off date of that annual registration cycle, as soon as practicable after that cut-off date, and in any event within that annual registration cycle; or
- (b) if the application is made after the relevant cut-off date of that annual registration cycle, as soon as practicable after the relevant cut-off date of the next following annual registration cycle, and in any event within the next following annual registration cycle.

26. The Administration has explained that an annual registration cycle means the period that begins on 6 February 2004 and ends on 31 December 2004, and thereafter each successive period of 12 months ending on 31 December. The relevant cut-off date means, in relation to the first annual registration cycle after the commencement of the Regulation, 1 March 2004; or, in relation to any subsequent annual registration cycle, 15 March in that annual registration cycle.

27. The Administration has also advised the Subcommittee that the time required to process a straightforward application which does not require variation and is not objected to by the public, will not be more than 10 weeks, if the application is made during the first registration cycle. If the application is made during any subsequent cycle, not more than eight weeks will be required. However, if an application does not meet the vetting criteria during the "preliminary processing" stage and needs to be varied, or if objection against the application is raised by the public, the total processing time may take not more than 19 weeks in the first registration cycle, and not more than 15 weeks in any subsequent cycle.

28. Hon Audrey EU is of the view that the cut-off dates, especially the one in relation to the first annual registration cycle after the commencement of the Regulation, should be extended to allow sufficient time for interested bodies or persons to apply for registration of names, abbreviations and emblems. She also considers that the processing time for applications, especially the straightforward applications, can be shortened.

29. The Administration has advised the Subcommittee that EAC, having further reviewed its work procedures, will revise the deadline for applications for registration of names, abbreviations and emblems to 1 April in 2004 and to 15 April in subsequent years. Further, EAC can shorten the time taken to process the applications, so that straightforward applications can be processed within seven weeks in respect of 2004, and within six weeks in subsequent years. For other cases, the processing time will be within 16 weeks in 2004, and within 13 weeks in subsequent years. EAC will need to set aside more time to handle applications in 2004, as it is envisaged that the number of applications will be greater during the first year of the scheme's operation.

Register on relevant particulars

30. The Administration has advised the Subcommittee that under section 20, EAC must establish and maintain a register of the relevant particulars in respect of the registered name and emblem of prescribed bodies and the registered emblem of prescribed persons. The Chief Electoral Officer must make the register available for inspection, free of charge, by members of the public during ordinary business hours at REO.

31. In response to the request of members, the Administration has agreed that the register would contain historical data and be accessible on the website of REO.

Notification of EAC's decision on application

32. Members have asked whether EAC would, when informing the applicant and objector (if applicable) of its decision on an application, give reasons for its decision.

33. The Administration has advised members that it is the intention of EAC to give reasons for its decision. As the relevant provisions of the Regulation do not reflect this intention, members have suggested the Administration to amend the Regulation to make clear this intention. After consulting EAC, the Administration has agreed to propose amendments to this effect.

Design of ballot paper

34. Members have considered the sample design of the ballot paper (in A3 size) attached to the Legislative Council Brief on the Regulation, and find the design

and layout rather confusing. Some members consider that there should be clear indication on the ballot paper as to how the different names, abbreviations and emblems of prescribed bodies and prescribed persons on a list are related to the individual candidates on the list. Some other members are of the view that any prescribed body whose name, abbreviation and emblem appears on a list should support all candidates on the list.

35. The Administration has advised that under section 5(1)(d) of the Regulation, a prescribed body will be required to give consent to having its name, abbreviation and emblem printed on the ballot paper as particulars relating to all candidates on a list. In other words, all candidates on a list will receive the support of a prescribed body whose name, abbreviation and emblem appears on the list.

36. Members of the Subcommittee have made the following comments concerning the design of the ballot paper -

- (a) candidates on the same list should be allowed flexibility to decide on the size and format of the photographs including the option of printing of group photographs, subject to the space permitted on the ballot paper;
- (b) a few options of the design of photographs to be printed on the ballot paper could be prepared for candidates to consider;
- (c) if there is only one candidate on a nomination list, the print size of the name/emblem etc could be made larger; and
- (d) the ballot paper should not be confined to A3 size, so as to allow flexibility for improvements to be made to the design of the ballot paper.

37. The Administration has advised that the design of the ballot paper will be dealt with in the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation which will be made after passage of the Regulation under scrutiny and is subject to the negative vetting procedure of LegCo.

38. The Administration has further advised that in giving further consideration to the matter, EAC will need to ensure that the layout and content of the ballot paper is clear, simple and easily understood by electors, and that the size is manageable for both voting and counting purposes. EAC has given consideration to members' suggestion that candidates be given the option of printing group photographs on the ballot paper, and reaffirms that only standard-sized photographs of individual candidates should be printed. This is because the purpose of the scheme, i.e. to facilitate identification of candidates by electors, is best served by standard-sized photographs of individual candidates, and could not be well served by the printing of group photographs. EAC will further consider

members' other comments on the design of the ballot paper when finalizing the design.

Proposed amendments

39. In response to members' comments and after consulting EAC, the Administration will propose the following amendments to the Regulation -

- (a) in order to provide more time for submitting applications for registration of names, abbreviations and emblems, the definition of "relevant cut-off date", as provided by section 2(1), will be amended to put back the deadline for applications to 1 April in 2004, and to 15 April in subsequent years. Accordingly, EAC will shorten the processing time and the objection period. Section 15(1) will be amended to revise the objection period from 21 to 14 days (paragraph 29 above refers);
- (b) section 3(3) and (4) and section 4(3) and (4) will be amended to allow each candidate or candidate list (as the case may be) to print on the ballot paper up to three emblems of prescribed bodies or candidates, and the names or abbreviations of three prescribed bodies (paragraph 13 above refers); and
- (c) sections 19(1) and 23(7) will be amended to make clear EAC will give reasons for its decision on an application (paragraph 33 above refers).

40. The Administration will also propose the following minor technical amendments -

- (a) section 4(5)(d) will be amended and a paragraph (f) will be added to require a requestor on a nomination list to specify the candidate in the list to whom a photograph or the description "Independent Candidate" or "Non-affiliated Candidate" is related;
- (b) section 7 will be amended to empower EAC to decide whether or not, and if so how, to signify which candidate is an "Independent Candidate" or a "Non-affiliated Candidate"; and
- (c) the items in the Schedule will be re-numbered for drafting reason.

41 The Administration has given notice to move a motion to amend the Regulation at the Council meeting on 4 February 2004. The wording of the motion is in **Appendix II**.

Recommendation

42. The Subcommittee supports the Regulation and the proposed amendments.

Advice sought

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

Council Business Division 2
Legislative Council Secretariat
28 January 2004

**Subcommittee on subsidiary legislation
relating to 2004 Legislative Council elections**

Membership List

Chairman Hon HUI Cheung-ching, JP

Members Hon CHEUNG Man-kwong
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan (since 12 January 2004)
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mei, SC, JP

(Total : 11 Members)

Clerk Mrs Percy MA

Legal Adviser Mr Arthur CHEUNG

Date 12 January 2004

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

PARTICULARS RELATING TO CANDIDATES ON BALLOT PAPERS
(LEGISLATIVE COUNCIL) REGULATION

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2004

RESOLVED that the Particulars Relating to Candidates on Ballot Papers (Legislative Council) Regulation, published in the Gazette as Legal Notice No. 263 of 2003 and laid on the table of the Legislative Council on 17 December 2003, be amended -

(a) in section 2(1), in the definition of "relevant cut-off date", by repealing "March" where it twice appears and substituting "April";

(b) in section 3 -

(i) by repealing subsection (3) and substituting -

"(3) The particulars referred to in subsection (2)(a) are the particulars set out in any one of the following paragraphs, with or without the particulars specified in item 4 of the Schedule -

- (a) the particulars specified in item 1 or item 2 or both of the Schedule and relating to not more than 3 prescribed bodies;
- (b) the particulars specified in item 3 of the Schedule and relating to the candidate; or
- (c) the particulars specified in item 1 or item 2 or both of the Schedule and relating to not more than 2 prescribed bodies, and the particulars specified in item 3 of the Schedule and relating to the candidate.";

(ii) by repealing subsection (4)(e) and substituting -

"(e) where the subject of request relates to one or more prescribed bodies, must be accompanied by a consent given, during the relevant nomination period, by the body or each of the bodies, as the case may be, in relation to the request in accordance with section 5(1).";

(c) in section 4 -

(i) by repealing subsections (3) and (4) and substituting -

"(3) The particulars referred to in subsection (2)(a)(i) are the particulars set out in any one of the following paragraphs, with or without the particulars specified in item 4 of the Schedule -

(a) the particulars specified in item 1 or item 2 or both of the Schedule and relating to not more

than 3 prescribed
bodies;

(b) the particulars
specified in item 3
of the Schedule and
relating to one or
both of the
candidates on the
nomination list
concerned;

(c) the particulars
specified in item 1
or item 2 or both of
the Schedule and
relating to one
prescribed body, and
the particulars
specified in item 3
of the Schedule and
relating to one or
both of the
candidates on the
nomination list
concerned; or

(d) the particulars specified in item 1 or item 2 or both of the Schedule and relating to 2 prescribed bodies, and the particulars specified in item 3 of the Schedule and relating to one of the candidates on the nomination list concerned.

(4) The particulars referred to in subsection (2)(b)(i) are the particulars set out in any one of the following paragraphs, with or without the particulars specified in item 4 of the Schedule -

(a) the particulars specified in item 1 or item 2 or both of the Schedule and relating to not more than 3 prescribed bodies;

(b) the particulars specified in item 3 of the Schedule and relating to not more than 3 candidates on the nomination list concerned;

(c) the particulars specified in item 1 or item 2 or both of the Schedule and relating to one prescribed body, and the particulars specified in item 3 of the Schedule and relating to not more than 2 candidates on the nomination list concerned; or

(d) the particulars specified in item 1 or item 2 or both of the Schedule and relating to 2 prescribed bodies, and the particulars specified in item 3 of the Schedule and relating to one of the candidates on the nomination list concerned.";

(ii) in subsection (5) -

(A) in paragraph (d), by repealing "; and" and substituting "and particulars to identify the candidate or candidates shown on the photograph or photographs;"

(B) in paragraph (e), by repealing the full stop and substituting "; and";

(C) by adding -

"(f) where the subject of request includes the particulars specified in item 4 of the Schedule, must specify the candidate or candidates to whom the particulars relate.";

- (d) in section 7, by adding "and whether and how to further include any indication on the ballot paper to show the candidate or candidates to whom the particulars relate" after "paper";
- (e) in section 15(1), by repealing "21" and substituting "14";
- (f) in section 19(1), by adding "and the reasons for the decision" after "the decision";
- (g) in section 23(7), by adding "and the reasons for the decision" after "the decision";
- (h) in the Schedule, by renumbering items 2, 3 and 4 as items 4, 2 and 3 respectively.

Clerk to the Legislative Council