

立法會
Legislative Council

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Paper for the House Committee meeting on 25 June 2004

**Third and final report of the Subcommittee on subsidiary legislation
relating to 2004 Legislative Council elections**

PURPOSE

This paper reports on the deliberation of the Subcommittee on Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation).

THE AMENDMENT REGULATION

2. The Amendment Regulation introduces changes to the electoral procedure of the Legislative Council (LegCo) elections. It will commence on 16 July 2004 in preparation for the LegCo election to be held on 12 September 2004.

3. The main changes are -

- (a) to conduct the counting of votes for geographical constituencies (GCs) at individual polling stations except small stations with less than 200 electors; and
- (b) to re-categorize certain types of questionable ballot papers which are clearly invalid by nature as invalid ballot papers so that they will not need to be treated as questionable ballot papers.

These changes are intended to speed up the counting process and have already been implemented in the 2003 District Council (DC) election. The counting of votes for functional constituencies (FCs), which will remain unchanged, will continue to be conducted at a central counting station.

4. Some other changes to detailed electoral arrangements are also made. They include -

- (a) dispensing with envelopes for FC ballot papers;

- (b) dispensing with the requirement to provide residential addresses of subscribers on candidates' nomination forms;
- (c) allowing an elector to leave the polling station before casting his vote and to return and cast his vote later; and
- (d) varying the no canvassing zone and no staying zone by a presiding officer.

THE SUBCOMMITTEE

5. Under the chairmanship of Hon Andrew WONG, the Deputy Chairman of the Subcommittee, four meetings have been held with the Administration. The main deliberation of the Subcommittee is set out below.

DELIBERATION OF THE SUBCOMMITTEE

Measures against corrupt and illegal conduct at elections and to protect secrecy of votes

Members' concerns and views

6. The Subcommittee has raised concerns about recent calls made by members of the public to radio phone-in programmes, claiming that some Mainland officials or residents had pressurized them or promised to offer them pecuniary benefits in an attempt to coerce or induce them into voting for certain candidates in the LegCo election to be held in September 2004. Some members of the public even claimed that they had been asked to use mobile telephones for taking photographs of their ballot papers while voting to prove their voting decisions.

7. The Subcommittee has requested the Administration and the Electoral Affairs Commission (EAC) -

- (a) to implement measures to restore the confidence of electors in the integrity of the elections and to protect secrecy of votes; and
- (b) to introduce enhanced publicity measures to promote public awareness of various arrangements and legislative provisions which protect the secrecy of votes, and to enhance public understanding of measures against corrupt and illegal conduct at elections.

Existing electoral law

8. The Administration has assured the Subcommittee that EAC is committed to ensuring that all public elections in Hong Kong are conducted openly, honestly and fairly. In this regard, a comprehensive set of electoral law is in place to regulate the conduct of elections.

Electoral Affairs Commission (Electoral Procedures) (Legislative Council) Regulation (the Regulation)

9. Under section 45 of the Regulation, it is an offence for a person on polling day within a polling station -

- (a) to communicate with an elector or an authorized representative (section 45(1)(a)) contrary to a direction of the Presiding Officer not to do so; or
- (b) to use a mobile telephone, paging machine or any other device for electronic communication, contrary to a direction of the Presiding Officer not to do so (section 45(1)(b)); or
- (c) to film or take photographs or make any audio or video recording without the express permission of the Presiding Officer, Returning Officer or a member of the Commission (section 45(2)).

A person who commits the above offence is liable upon conviction to a fine of \$5,000 and imprisonment for three months.

10. Under section 96(8) of the Regulation, a person who communicates at any time to any person any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted, commits an offence and is liable on conviction to a fine of 5,000 and imprisonment for three months.

Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO)

11. Under ECICO, it is an offence -

- (a) to offer, solicit or accept an advantage as an inducement for a person to vote or not to vote for a particular candidate; and
- (b) to use force or duress against another person to induce that person to vote or not to vote for a particular candidate.

A person who commits the above offence is, if convicted, liable to a maximum fine of \$500,000 and imprisonment for seven years.

12. Section 5 of ECICO stipulates that the Ordinance applies to all conduct concerning an election, whether the conduct is engaged within Hong Kong or elsewhere.

EAC's proposals

Publicity measures

13. The Administration has advised members that it will introduce a range of education and publicity measures to promote honest and clean elections. For example, the public will be encouraged to report all suspected cases of corrupt and illegal conduct that they are aware of to the Independent Commission Against Corruption (ICAC). Relevant provisions of ECICO will be publicized through the website of the ICAC. An information leaflet on the gist of ECICO will be given to candidates and their election agents at the time of their nomination. A reminder leaflet will be sent to all electors together with the poll card to remind them to abide by law in elections. The Administration will also make use of special TV programmes to promote public awareness of various arrangements and legislative provisions which protect the secrecy of votes.

Proposal to remove curtains in front of voting compartments

14. EAC proposes that the curtains in front of the voting compartments be removed so that polling officers, candidates and their agents could observe generally the conduct of electors inside the voting compartments. A yellow line will be marked on the floor which will generally be one metre from the voting compartments, depending on the configuration of individual polling stations. No other electors will be allowed to enter or stay in the area beyond the yellow line when an elector is marking the ballot paper inside the voting compartments.

15. The majority of the members have no strong view on the proposal. A few members have expressed reservation over the proposal on the ground that the secrecy of votes might be compromised. Hon WONG Yung-kan has suggested that if the proposal is implemented, the yellow line should be marked at least two metres from the voting compartments to maintain a reasonable distance between electors and other persons inside the polling station.

16. After consideration of members' views, EAC agrees that the yellow line should generally be marked at least one metre from the voting compartments and, if the configuration of the polling station allows, the distance be extended to up to two metres. Members have not raised further queries on the revised proposal.

Proposal to require electors to switch off mobile telephones

17. To prevent the use of camera-equipped mobile telephones in voting compartments, members have suggested EAC to consider prohibiting electors from carrying camera-equipped mobile telephones into polling stations, or requesting electors to deposit their camera-equipped mobile telephones with the polling staff before they enter the voting compartments.

18. EAC has advised members that the unauthorized use of communication or audio/video devices inside polling stations has not been a problem in past elections. The operational and resource implications of implementing the suggestion of requiring electors to deposit their mobile telephones with polling staff before entering the voting compartments would need to be carefully considered, including -

- (a) how polling staff should enforce the requirement, for example, whether they would be expected to check the personal belongings of voters;
- (b) whether electors will be unduly inconvenienced, as they have to spend extra time to deposit and retrieve their mobile telephones and cameras before and after voting; and
- (c) what arrangements should be put in place to ensure that electors will deposit their mobile telephones and cameras before voting and retrieve them afterwards in an orderly manner, and to ensure the safe custody of these mobile telephones and cameras when electors are inside the voting compartments and the return of the mobile telephones and cameras to the right owners afterwards.

19. To address members' concern, EAC proposes to add a new subsection under 45(1) of the Regulation to provide that a person commits an offence if the person switches on a mobile telephone in his possession or leaves a mobile telephone in his possession switched on, contrary to a direction of the Presiding Officer.

Proposal to increase the level of penalty

20. In response to some members' suggestion to increase the penalty under section 45 of the Regulation, the Administration has explained that the current penalty for committing the offences under section 45 is a fine at level 2 (i.e. \$5000) and imprisonment for three months for each offence. Under section 7(5) of the Electoral Affairs Commission Ordinance, regulations made by EAC may provide that any contravention of a requirement in or made under the regulations is an offence and is punishable by a fine not exceeding level 2 (i.e. \$5000) and imprisonment not exceeding 6 months. Thus, the current level of fine under section 45 of the Regulation is already the maximum which the EAC may impose. As regards the imprisonment term, EAC considers that the existing level already has a sufficient deterrent effect and further increase of imprisonment terms is not necessary.

21. Some members consider that the existing level of penalty is adequate having regard to the Administration's advice that no prosecution had been taken against any person for committing an offence under section 45 of the Regulation.

22. In view of the recent spate of events concerning voter intimidation, some members maintain the view that the imprisonment term should be increased to six months to achieve a sufficient deterrent effect. The move will also demonstrate EAC's determination in ensuring that all public elections will be conducted in an open, fair, and honest manner and in preserving the secrecy of votes.

23. Having considered members' views, EAC proposes to increase the term of imprisonment from three months to six months for -

- (a) offences under section 45(1) (including the proposed offence for leaving mobile telephones switched on contrary to the direction of the Presiding Officer mentioned in paragraph 19 above);
- (b) offences under section 45(2) (i.e. filming, taking photographs or making any audio or video recording within a polling station without express permission); and
- (c) offences under section 96 of the Regulation which specifically prohibits acts infringing the secrecy of votes.

Members' views on the proposals of requiring electors to switch off mobile telephones and increasing the penalty level

24. Members in general support the proposal of EAC to increase the imprisonment term from three months to six months for offences such as taking photographs within a polling station under section 45(2), and offences relating to protection of secrecy of votes under section 96.

25. However, members including Hon Andrew WONG, Hon SIN Chung-kai, Hon WONG Yung-kan, Hon Howard YOUNG, Hon IP Kwok-him and Hon Audrey EU have expressed reservations about the legislative proposal to penalize electors who have their mobile telephones switched on inside polling stations, and the level of penalty imposed for committing the proposed offence. Their views include, first, whether it is justified to penalize electors for not switching off their mobile telephones since using mobile telephones inside a polling station for electronic communication is already an offence under section 45(1)(b) of the Regulation. Second, imprisonment of six months is too heavy and disproportionate to the severity of the proposed offence. Third, the crux of the matter is about the use of camera-equipped mobile telephones or other devices for taking photographs inside the voting compartments, and any measures proposed should specifically target at such conduct. Fourth, the penalties imposed under section 45(1) and section 45(2) need not be the same since they deal with different offences. Lastly, electors, especially elderly people, will be unduly inconvenienced by the new requirement and discouraged from voting at elections. This will affect the voter turnout rate.

26. Hon Emily LAU considers that the proposal acceptable as it is unlikely for an elector to commit the offence if he is reminded by polling staff to comply with the requirement to switch off his mobile telephone before entering the voting compartments. Ms LAU requests that EAC should take appropriate measures to ensure that electors are reminded and given clear directions to comply with the new requirement. In the light of the views expressed by other members on the level of penalty for the proposed offence under section 45(1), she has no strong view whether the imprisonment term should be six months or less.

27. The Administration has explained that under the proposal, polling staff will remind electors to switch off their mobile telephones when issuing ballot papers to them. More prominent signs will also be posted at the polling stations to remind electors of the requirement. In addition, EAC will publicize the new arrangement before polling day so that electors are aware of it.

The revised proposal

28. After consideration of members' views, the Administration agrees not to further pursue the proposal to make leaving mobile telephones switched on inside polling stations an offence (paragraph 19 above refers). However, it will implement administrative measures to encourage electors to switch off their mobile telephones inside polling stations. Polling staff will advise electors to switch off their mobile telephones when issuing ballot papers to them. More prominent signs will also be posted at the polling stations to remind electors to switch off their mobile telephones. In addition, the imprisonment term for committing an offence under section 45(1) will remain to be three months (paragraph 23(a) above refers).

29. The Administration has also confirmed that the proposal to increase the imprisonment term for committing an offence under section 45(2) and section 96 from three months to six months will remain unchanged (paragraph 23(b) and (c) above refers). The Subcommittee supports the revised proposal.

Decentralized counting arrangement for GCs

Proposed counting arrangement for GCs

EAC's proposal

30. The Administration has advised the Subcommittee that counting of votes for elections was traditionally conducted in a centralized manner. In the 1999 DC election, counting was conducted at the 18 district counting stations. In the 2000 LegCo election, one regional counting station was set up for each of the five GCs.

31. In the 2003 DC election, counting of votes was for the first time conducted at individual polling stations. EAC considers that the decentralized counting arrangements introduced in the 2003 DC election were on the whole satisfactory and proposes that they be adopted in the 2004 LegCo election. Under the new arrangement, ballot boxes no longer have to be transported after the close of poll

from polling stations to counting stations for the purpose of vote counting. The arrangement has two main advantages. First, the efficiency of the vote counting process could be enhanced, and the election results could be announced earlier. Second, security risks arising from the need to transport ballot boxes from polling stations to counting stations could be eliminated.

32. The Administration has also advised the Subcommittee that the new ballot papers introduced for the 2004 LegCo election are larger in size, and much more heavy and bulky to handle than the traditional form of ballot papers, and a large number of new ballot boxes will be required. If vote counting were conducted in a centralized manner, it would take more time and effort to transport the ballot boxes from the polling stations to the counting stations, and the counting process would be delayed.

33. In response to Members' concern about protection of secrecy of votes in the case of polling stations which serve only a very small number of electors in the 2003 DC election, arrangements were made so that the ballot papers of a small polling station, i.e. one with less than 200 registered electors, were delivered to a polling station which has been designated as a main counting station. The ballot papers cast at the small polling station and the main station were mixed before the votes were counted. EAC proposes that similar arrangement be adopted in the 2004 LegCo election.

34. In response to members' enquiries, the Administration has advised that -

- (a) about 500 counting stations would be designated in the 2004 LegCo GC election. Taking into account the number of registered GC electors and the past voter turnout rate, for planning purpose it is estimated that each counting station will handle an average of about 3,000 ballot papers; and
- (b) the number of polling stations with less than 200, 500 and 1000 registered electors is 7, 17 and 30-40 respectively.

Members' views and concerns

35. Hon Andrew WONG has stressed the importance of upholding the principle of mixing of ballot papers from polling stations within a GC in order to safeguard the integrity of the electoral process. Under the principle, if more than one polling station is used for polling within a GC, ballot papers from two or more polling stations must be mixed before counting the votes in respect of the GC. This would safeguard the integrity of the electoral process within a GC, and minimize the chance of intimidation and reprisals, or other illegal and corrupt conduct at elections. In his view, there should be one counting station per GC, or at least a few counting stations per GC (e.g. on the basis of one per District Council district in a GC).

36. Hon Emily LAU raises strong objection to the proposal and has expressed serious concern that the preferences of voters of individual polling stations might be easily revealed under the proposed counting arrangement, in view of the small number of ballot papers handled by each polling cum counting station under the proposed decentralized counting arrangement.

37. Hon CHEUNG Man-kwong considers the proposed arrangement for counting of GC votes might need to be reviewed in the light of the recent speculations about acts of intimidation aimed at influencing the outcome of the 2004 LegCo election. He suggests that for polling stations with less than 1,000 registered electors, the ballot papers should be delivered to a main counting station where the ballot papers cast at the small polling station and the main station would be mixed before the votes were counted.

38. Hon IP Kwok-him and Hon Howard YOUNG support the proposed decentralized counting arrangement for GCs which would enhance the efficiency of the vote counting process. However, they have no objection for ballot papers from polling stations with less than 500 registered electors to be mixed before counting.

39. Other concerns relating to the proposed counting arrangement for GCs have also been raised during the deliberation of the Subcommittee. These include the difficulty faced by candidates with lesser resources to identify and deploy a sufficient number of agents to monitor the counting process at each and every station within a GC, and whether the election results could be announced earlier as anticipated, in view of the long time taken for some polling stations to be converted into counting stations in the 2003 DC election. Noting that EAC did not have information on the conversion time in the 2003 DC election, the Subcommittee requests EAC to keep a record on the time for polling stations to complete converting into counting stations in the coming LegCo election, for future review.

EAC's revised proposal

40. The Administration advises the Subcommittee that EAC has considered members' concerns and views. EAC does not favour the suggestion of adopting a mid-way approach whereby some degree of decentralization would be introduced, for example, conducting vote counting at the district level. Its main considerations are as follows -

- (a) ballot papers from individual polling stations will need to be transported to the 18 district counting stations. Considerable time will be required for the transportation process and for staff of the district counting stations to verify the ballot paper accounts; and
- (b) the transport of ballot boxes from polling stations to counting stations will, as with the status quo arrangements, still give rise to security risks.

In other words, the proposed arrangement will not achieve the intended benefit of decentralised counting (i.e. speeding up the counting process) but will at the same time carry the potential risk associated with the need to move a large number of ballot boxes around the territory.

41. As regards maintaining the status quo, i.e. conducting vote counting at five regional counting stations, EAC considers the main disadvantage is that the counting process will take considerable time to complete. There will also be the security risks associated with the transportation of ballot boxes.

42. EAC remains of the view that decentralized counting arrangement is the most effective approach to address candidates' concern, expressed in past elections, about the long time taken to complete the counting process and to announce the election results.

43. EAC has also considered members' suggestion of raising the "200 electors" threshold for the purpose of defining small polling stations, where ballot papers cast would be delivered to a main counting station and mixed with the ballot papers of the main counting station before the votes were counted. EAC does not consider that the secrecy of votes will be compromised under the decentralized counting arrangement. Nevertheless, in order to allay members' concern, EAC agrees to raise the "200 electors" threshold to "500 electors". It is estimated that there will be about 17 polling stations with less than 500 registered electors in the 2004 LegCo election. EAC considers that the operational implications associated with the transportation of ballot boxes from these 17 polling stations to the main counting stations manageable.

44. Members in general find the revised proposal acceptable. Hon Andrew WONG has reiterated the importance of the principle for ballot papers from different polling stations within a GC to be mixed before counting, regardless of the number of electors in the polling stations. This was a long-standing arrangement until counting of votes was decentralized to individual polling stations for the first time in the 2003 DC election. Mr WONG has cautioned members that giving up of this important principle would result in illegal and corrupt conduct at elections in the long run. Hon IP Kwok-him makes clear that he does not share this view.

45. The Administration will propose amendments to provide for the increased threshold.

Recounting arrangements

46. The Administration has advised that under the Amendment Regulation, after the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the GC under his charge, he must add up such results together with the counting results in respect of any GC ballot papers found in ballot boxes for FCs before he asks if any candidates want to request a recount of the votes of all the counting stations for the GC.

47. According to the experience of past elections, the number of GC ballot papers misplaced in FC ballot boxes is very small. In the coming election, the number should be further reduced, since the design of the new ballot boxes and new ballot papers will be such that it will not be easy to put the GC ballot papers into FC ballot boxes. The possibility of the overall results of a particular GC being affected by the counting results of misplaced GC ballot papers would be slim. EAC considers it reasonable to put in place a mechanism to allow candidates to request a recount of the votes in all counting stations for a GC without the need to wait for the counting results of any misplaced ballot papers.

48. EAC therefore proposes that when the Returning Officer makes known to the candidates the counting results of all the counting stations for the GC, he must also make known to the candidates the estimated number of GC ballot papers misplaced in FC ballot boxes. Candidates may at that point request a recount of the votes of all the counting stations together with the votes of the misplaced GC ballot papers to be conducted after the latter is ascertained. The Returning Officer will not entertain the request if the estimated number of misplaced GC ballot papers is less than the difference between the remaining number of votes cast for any two lists of candidates (in which case the counting results of the misplaced GC ballot papers will not affect the overall election results of the GC in question). However, regardless of whether such a condition is met, candidates may request a recount of the votes of all the counting stations once the counting results of these votes are known). They may also request a recount of the votes of the misplaced GC ballot papers after they have been notified of the counting results of the misplaced GC papers. The Returning Officer must comply with the request unless he is of the opinion that the request is unreasonable.

49. The Administration will propose amendments to give effect to the revised counting arrangements. The Subcommittee has no objection to the revised proposal.

PROPOSED AMENDMENTS

50. Apart from the amendments mentioned above, and having regard to the comments of members and the legal adviser, the Administration will also propose other minor textual amendments.

51. The Administration will give notice on 29 June 2004 to move a motion to amend the Amendment Regulation at the Council meeting on 7 July 2004. The wording of the draft Resolution is in **Appendix**.

RECOMMENDATION

52. The Subcommittee supports the Amendment Regulation and the draft Resolution.

ADVICE SOUGHT

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

Council Business Division 2
Legislative Council Secretariat
25 June 2004

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE)
(LEGISLATIVE COUNCIL) (AMENDMENT) REGULATION 2004

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

RESOLVED that the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 84 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

- (a) in section 2(a)(iii)(A), by repealing "(視何者適用而定)" and substituting "(視何者適用而定)";

(b) in section 14, in the heading, by adding "某" before "地方選區";

(c) in section 19(a), in the new section 28(1B), by repealing "200" and substituting "500";

(d) in section 19(a), in the new section 28(1C), by adding "any of" before "the small polling station";

(e) by adding -

**"27A. Presiding Officer to exhibit
at polling station notice
providing information for
the guidance of electors**

Section 39 is amended by adding -

"(1A) The Presiding Officer of a small polling station must ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station is exhibited outside the small polling station."";

(f) by repealing section 29(a) and substituting -

"(a) in subsection (1) -

(i) in paragraph (a), by repealing "(17) (a)" and substituting

"(17)";

(ii) by adding immediately after paragraph (a) -

"(aa) conduct any activity for canvassing for votes, so that the sound of the activity can be heard in the no canvassing zone;"

(iii) in paragraph (ca) -

(A) by repealing "(17) (b)" and substituting "(18)";

(B) by adding "or wear" after "display";

(C) by repealing "or clothing" and substituting ", clothing or head-dress";

(D) by repealing subparagraph (ii) and substituting -

"(ii) makes direct reference to -

(A) a body any member of which is standing as a candidate

in the
election; or
(B) a prescribed
body the
registered
name or
registered
emblem of
which has
been printed
on any
ballot paper
for the
election;
or";";

- (g) by repealing section 32(a) and substituting -
- "(a) in subsection (1), by repealing "Presiding
Officer" and substituting "Returning
Officer, Assistant Returning Officer,
Presiding Officer or any polling
officer";";
- (h) in section 32(b), in the new section 45(2)(b), by
adding "或界別" after "有關選區" where it secondly
appears;
- (i) in section 32(d), by repealing the full stop and
substituting a semicolon;

- (j) in section 32, by adding -
 - "(e) in subsection (7), by repealing everything after "an" and substituting -
 - "offence -
 - (a) under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months;
 - (b) under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months."."
- (k) in section 36, in the new section 53A, by adding -
 - "(8) In this section, references to "elector" are to be construed as including an authorized representative.";
- (l) in section 37(c), in the new section 54(3)(a), by repealing "丙";
- (m) in section 37(c), in the new section 54(3)(b), by repealing "丙" where it secondly appears;
- (n) in section 42, in the new section 63A(3), by repealing everything after "boxes" and substituting ", the sealed packets and the ballot paper account

prepared by that Officer to the Presiding Officer of the main counting station.".";

- (o) in section 49(b), in the new section 69(2), by repealing everything after "the counting" where it secondly appears and substituting -

"station,

the Chief Returning Officer or the Returning Officer, as may be appropriate, may order the person to leave the counting station or the vicinity of the counting station, as the case may be, immediately.";

- (p) by repealing section 50(a) and substituting -

"(a) in subsection (1), by repealing everything after "under" and substituting -

"section 28(9) (a) -

- (a) the Presiding Officer of a GC polling station which is also designated as a counting station (other than a main counting station) must deliver or arrange to be delivered to the

central counting station the ballot boxes for the FC ballot papers from that Officer's polling station, together with the sealed packets under section 63 and the ballot paper accounts prepared by that Officer for the functional constituencies; and

- (b) the Presiding Officer of a GC polling station which is also designated as a main counting station must, in addition to the ballot boxes, sealed packets and ballot paper accounts referred to in paragraph (a), deliver or arrange to

be delivered to the central counting station the relevant ballot box or boxes, sealed packets and ballot paper accounts delivered to that Officer under section 63A(3) for the functional constituencies."";

(q) in section 55(c), by adding -

"(ia) in paragraph (a), by repealing "Chief Returning Officer or to the";";

(r) in section 63, in the new section 79A(5), by adding "under subsection (4)" after "constituency" where it first appears;

(s) in section 63, by repealing the new section 79A(6), (7), (8), (9) and (10) and substituting -

"(6) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must make known the results to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a

candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency, that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(6A) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must also make known the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency, if any, to the candidate or their election agents or counting agents at the place specified by the Returning Officer. A candidate or the election agent of the candidate who is present at the specified place may make a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency and the votes recorded on the GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency.

(7) If the Returning Officer decides to comply with the request referred to in subsection (6),

that Officer must require all the Assistant Returning Officers to instruct the Presiding Officers of the polling stations in their respective charge to conduct a re-count at the relevant counting stations forthwith.

(8) The Presiding Officer of each of the counting stations for the geographical constituency must make known the result of the re-count at the counting station to the candidates or their election agents or counting agents who are present at the counting station and must report that result to the relevant Assistant Returning Officer.

(9) After the Assistant Returning Officer has been notified of the results of the re-count of all the counting stations in his charge for the geographical constituency under subsection (8), that Officer must make known the results to the Returning Officer for the geographical constituency.

(10) After the Returning Officer has been notified of the results of the re-count of all the counting stations for the geographical constituency under subsection (9), that Officer must add together-

- (a) such results; and
- (b) the result of the counting of the votes recorded on the GC ballot papers

handed over to that Officer under section 74(8)(c) for the geographical constituency, if any,

and make known the aggregate result to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes referred to in paragraph (b), that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(11) Subject to subsection (12), if the Returning Officer decides to comply with a request referred to in subsection (6A), that Officer must conduct a re-count of -

- (a) the votes of all the counting stations in accordance with the steps as described in subsections (7), (8) and (9); and
- (b) the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency,

and make known the final result to the candidates or their election agents or counting agents at the

place specified by that Officer.

(12) The Returning Officer must not conduct a re-count under subsection (6A) -

(a) unless the request for such re-count is made immediately after that Officer makes known, under that subsection, the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency; or

(b) if the estimated number of GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency is less than the difference between the numbers of remaining votes cast for any 2 lists of candidates for the geographical constituency, as determined in accordance with the counting system under section 49 of the Legislative Council Ordinance (Cap. 542).";

(t) by adding -

"72A. Enforcement of provisions as to secrecy

Section 96(10) is amended by repealing "3" and substituting "6".";

(u) in section 78, by adding -

"(ba) in section 5(1) and (5), by repealing "or section 18 of Schedule 2 to that Ordinance";";

(v) by repealing section 78(c)(i) and substituting -

"(i) in subsection (1) -

(A) by repealing "or section 18 of Schedule 2 to that Ordinance";

(B) by adding "or the Presiding Officer, as may be appropriate," after "Returning Officer";".

Clerk to the Legislative Council

2004