

立法會
Legislative Council

LC Paper No. CB(2)3085/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/SS/4/03

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

**Minutes of eighth meeting
held on Thursday, 17 June 2004 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Andrew WONG Wang-fat, JP (Deputy Chairman)
Hon SIN Chung-kai
Hon WONG Yung-kan
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon HUI Cheung-ching, JP (Chairman)
Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, JP

Public Officers attending : Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Miss May CHAN Wing-shiu
Principal Assistant Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer

Ms Lonnie NG Wah-chi
Senior Government Counsel

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Millie WONG
Senior Council Secretary (2)4

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)2813/03-04)

The minutes of the meeting on 8 June 2004 were confirmed.

II. Meeting with the Administration

(Legislative Council Brief on Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004, LC Paper Nos. 2832/03-04(01) and 2509/03-04(01))

Electoral Affairs Commission (Electoral Procedure) (Legislative Council)
(Amendment) Regulation 2004 (the Amendment Regulation)

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Scrutiny of the Amendment Regulation

3. The Subcommittee completed scrutiny of the Amendment Regulation.
4. The Administration advised that it would propose amendments to -
- (a) the proposed section 53A to replace an "elector" with an "elector or authorized representative";

Action

- (b) the proposed section 63A to include posting of a notice in each small polling station informing the public the name and address of the main counting station where the votes of the small polling station would be counted; and
- (c) the proposed section 63A(3) to include the delivery of the ballot paper account to the Presiding Officer of the main counting station.

Prevention of the use of camera-equipped mobile telephones in voting compartments and increase of penalty under sections 45 and 96 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (the Regulation)

5. Members discussed the Electoral Affairs Commission (EAC)'s proposal to add a new section 45(1)(aa) to the Regulation to require electors to switch off mobile telephones inside polling stations, and to increase the imprisonment term from 3 to 6 months for committing offences under sections 45(1), 45(2) and 96 of the Regulation.

6. Mr IP Kwok-him expressed strong reservations about the proposed imprisonment term of 6 months, which he considered to be too harsh for a person who had left his mobile telephone switched on inside a polling station. He also considered that the proposal might cause undue inconvenience to electors and deter them from voting at the Legislative Council (LegCo) election.

7. Mr SIN Chung-kai and Mr WONG Yung-kan generally shared Mr IP's view. Mr SIN said that the crux of the matter concerned the taking of photographs of ballot papers and not whether an elector's mobile telephone was switched on or not. Mr WONG said that coupled with the proposed measure of removing the curtains in front of the voting compartments, the existing imprisonment term of 3 months had a sufficient deterrent effect.

8. Mr Howard YOUNG said that since members' concern was about electors taking photographs of ballot papers, increasing the imprisonment term under section 45(2) of the Regulation was appropriate. Leaving a mobile telephone switched on inside a polling station by an elector was not a very serious matter.

9. Ms Emily LAU supported EAC's proposal. Having regard to members' views on the level of penalty, she suggested that a two-level imprisonment term for offences under sections 45(1)(aa) and 45(1)(b) of the Regulation could be considered, e.g. 6 months' imprisonment term for committing an offence under section 45(1)(b), and a lesser imprisonment term for committing an offence under section 45(1)(aa). In the light of the recent cases of voter intimidation reported in the media, she considered it important for the Government to send a loud and clear message to the public about the consequences of committing offences under the electoral legislation.

Action

10. The majority of members were of the view that using camera-equipped mobile telephones or other devices to take photographs of ballot papers and the use of mobile telephones were two different issues and should be dealt with separately. The Deputy Chairman reiterated his view that requiring all electors to switch off their mobile telephones was unnecessary, and only electors with camera-equipped mobile telephones should be requested to deposit their mobile telephones with the polling staff before entering the voting compartments. Ms Emily LAU, however, appreciated that the proposal to require all electors to switch off their mobile telephones was a more feasible option in view of the operational difficulties arising from the Deputy Chairman's proposal.

11. Members in general supported the proposal of increasing the imprisonment term from 3 months to 6 months for the offence of taking photographs within a polling station under section 45(2), and for offences relating to protection of secrecy of votes under section 96.

12. Members had no strong views on EAC's proposal to remove the curtains in front of the voting compartments, and noted that the yellow line marked on the floor would be at least two metres from the voting compartments as far as possible.

13. The Administration was requested to consider -

- (i) whether the proposed addition of section 45(1)(aa) to the Regulation should be revised in the light of members' views expressed at the meeting; and
- (i) whether section 96 of the Regulation should be amended to make clear that it would not apply to exit polls.

Decentralized counting arrangements for Geographical Constituencies (GCs)

14. Members noted EAC's proposal to raise the "200 electors" threshold to "500 electors" 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. Amendments would be proposed to the Regulation to provide for the increased threshold.

15. The Deputy Chairman did not accept the proposal. He maintained his view that it was important to uphold the principle of mixing the ballot papers from different polling stations within a GC before counting. He also commented that candidates with lesser resources would have difficulties in deploying sufficient manpower as counting agents in each and every counting station in the GC, which might number as many as 100.

Action

16. In view of the long time taken for some polling stations to convert into counting stations in the 2003 District Councils election, Ms Emily LAU suggested that EAC should implement a performance pledge for the conversion to be completed for the coming LegCo election, e.g. within half an hour. Members suggested and Chief Electoral Officer agreed that EAC should keep a record on the time taken for each polling station to convert into a counting station in the coming LegCo election for future review.

III. Date of next meeting

17. The next meeting was scheduled for 24 June 2004 at 10:45 am.

18. The meeting ended at 5:20 pm.

Council Business Division 2
Legislative Council Secretariat
15 July 2004

Action

Annex

**Proceedings of the eighth meeting of the Subcommittee on
subsidiary legislation relating to 2004 Legislative Council elections
on Thursday, 17 June 2004 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000001 - 000114	Deputy Chairman	Confirmation of minutes.	
000115 - 000502	Admin	Briefing on Administration's response to issues raised at the meeting on 8 June 2004, and Electoral Affairs Commission (EAC)'s proposal to - (a) add a new section 45(1)(aa) to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (the Regulation) to require electors to switch off mobile telephones inside polling stations, and (b) to increase the imprisonment term from 3 to 6 months for committing offences under sections 45(1), 45(2) and 96 of the Regulation.	
000503 - 001332	Mr IP Kwok-him Admin Deputy Chairman	Concern on the imprisonment term for the proposed offence under section 45(1)(aa) of the Regulation.	
001333 - 001446	Deputy Chairman Admin	Approach to amend the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the Amendment Regulation).	
001447 - 002126	Mr SIN Chung-kai Deputy Chairman Admin Mr IP Kwok-him	Concern on the imprisonment term for the proposed offence under section 45(1)(aa) of the Regulation. Proposed measure to target specifically electors' conduct of taking photographs of ballot papers inside polling stations.	

Action

Time Marker	Speaker(s)	Subject(s)	Action Required
002127 - 003134	Ms Audrey EU Deputy Chairman Admin Mr IP Kwok-him	Circumstances under which an elector would commit an offence under section 45(1)(b) of the Regulation.	
003135 - 003743	Ms Emily LAU Admin Deputy Chairman SALA2	Support for EAC's proposal. Proposed offence under section 45(1)(aa) to confine to camera-equipped mobile telephones only.	
004539 - 005221	Mr Howard YOUNG Deputy Chairman Admin Mr WONG Yung-kan	Concern on the imprisonment term for the proposed offence under section 45(1)(aa) of the Regulation. Proposed measure to target specifically electors' conduct of taking photographs of ballot papers inside polling stations.	
005222 - 005625	Deputy Chairman Admin	Concern on whether the proposed offence under section 45(1)(aa) of the Regulation was necessary. Suggestion for electors to deposit camera-equipped mobile telephones with polling staff before entering voting compartments. Support for increasing the imprisonment term for offences under sections 45(2) and 96 of the Regulation. Views on removing the curtains in front of the voting compartments.	Admin to reflect views of members to EAC (paras 5-12 of the minutes refers), and to give a written response at the next meeting on 24 June 2004.
005626 - 005932	Deputy Chairman	Objection to the decentralized counting arrangement and EAC's proposal to raise the "200 electors" threshold to "500 electors" for the purpose of defining small polling stations.	Admin to reflect views of members to EAC (paras 14-15 of the minutes refers), and to give a written response at the next meeting on 24 June 2004.
005933 - 011441	Deputy Chairman Admin SALA2 Ms Emily LAU	Procedure for Members to propose amendments to the draft Resolution to be moved by the Administration for the purpose of amending the Amendment	

Action

Time Marker	Speaker(s)	Subject(s)	Action Required
		Regulation.	
011442 - 024750	Deputy Chairman Admin Ms Emily LAU SALA2 Mr IP Kwok-him	Detailed scrutiny of the Amendment Regulation (from section 28 onwards). Concern on the long time taken for polling stations to convert into counting stations in the 2003 District Councils election. Date of next meeting.	Admin to propose amendments to sections 53A, 63A and 63A(3) of the Regulation. Admin to consider - (a) whether the proposed addition of section 45(1)(aa) to the Regulation should be revised in the light of members' views; and (b) whether section 96 of the Regulation should be amended to make clear that it would not apply to exit polls.

Council Business Division 2
Legislative Council Secretariat
 15 July 2004