

**Subcommittee on Subsidiary Legislation
Relating to 2004 Legislative Council Elections**

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

Introduction

This paper sets out the response of the Electoral Affairs Commission (“EAC”) to comments put forth by Members at the last Subcommittee meeting held on 27 May 2004 regarding:

- (a) the prevention of the use of camera-equipped mobile telephones in voting compartments; and
- (b) the proposed decentralized counting arrangement for geographical constituencies (“GCs”).

Background

2. At the last meeting, Members expressed concern about recent media reports on the alleged use of duress against electors with a view to influencing their voting behaviour. They suggested that existing measures should be enhanced to preserve the secrecy of votes. It was also suggested that the proposal to conduct decentralized counting arrangement for GCs should be reviewed.

Measures to Protect Secrecy of Votes

Use of Camera-equipped Mobile Telephones

3. Under section 45 of the Electoral Affairs Commission (Electoral Procedures) (Legislative Council) Regulation (“the Regulation”), if on polling day within a polling station, a person:

- (a) uses a mobile telephone, paging machine or any other device for electronic communication contrary to a direction of the Presiding Officer not to do so; or

- (b) films or takes photographs or makes any audio or video recording without the express permission of the Presiding Officer, Returning Officer or a member of the Commission,

he commits an offence, and is liable upon conviction to a fine of \$5,000 and imprisonment for 3 months.

4. The EAC enforced the above provision vigorously in all past elections. Having considered Members' suggestions, the EAC proposes that in the coming Legislative Council (LegCo) election, a general direction be given to all electors under section 45 of the Regulation requiring them to switch off their mobile telephones when they are inside a polling station, regardless of whether their telephones are camera-equipped. In addition, the following measures will be introduced:

- (a) the curtains in front of the voting compartments will be removed so that polling officers, candidates and their polling agents can observe 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 booth, 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;
- (b) when issuing the ballot papers to electors, polling staff will remind electors not to use mobile telephones/cameras or to take photographs inside polling station; and
- (c) more prominent signs will be posted at the polling stations to remind electors not to use mobile telephones/cameras or to take photographs inside polling stations.

Publicity

5. The Government will put in place publicity measures to promote public awareness of various arrangements and legislative provisions which protect the secrecy of votes. The publicity measures

will also cover relevant provisions in the Election (Corrupt and Illegal Conduct) Ordinance (“ECICO”) to enhance public understanding of measures against corrupt conduct in elections, including:

- (a) offering, soliciting or accepting an advantage as an inducement for a person to vote or not to vote for a particular candidate; and
- (b) using force or duress against another person to induce that person to vote or not to vote for a particular candidate.

The penalty for committing the above offences upon conviction (i.e. maximum fine of \$500,000 and imprisonment of seven years) will also be publicized. The departments concerned are now working on the details of the publicity measures.

Other Measures considered

Depositing Mobile Telephones with Polling Staff

6. The EAC has considered the suggestion of requiring electors to deposit their mobile telephones with polling staff before they enter the voting compartments. The EAC takes the view that the enhanced measures proposed in paragraphs 4 and 5 above should suffice. It should not be necessary to require electors to deposit their mobile telephones with polling staff. Further, pursuing the proposal will give rise to a number of operational implications, 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. The resource implications of such arrangements will also need to be taken into account.

Increase of Penalty

7. At the last meeting, Members suggested increasing the penalty under section 45 of the Regulation. 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. Members may wish to note that under section 7(5) of the Electoral Affairs Commission Ordinance, regulations made by the 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 fine level under section 45 of the Regulation is already the maximum which the EAC may impose. As regards the imprisonment term, the EAC considers that the existing level already has a sufficient deterrent effect and further increase of imprisonment terms is not necessary.

8. Members may wish to note that section 96(8) of the Regulation may also be relevant. Under section 96(8), 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 at level 2 and to imprisonment for three months.

9. Further, cases which involve corrupt conduct in elections will be dealt with under the ECICO. Any person who commits the offences set out in paragraph 5 above is liable on conviction to a maximum fine of \$500,000 and imprisonment for seven years.

Decentralized counting arrangement for GCs

10. At the last meeting, Members suggested that the proposal to conduct counting of GC votes in individual polling stations be reviewed. It was suggested that the EAC should consider a mid-way approach whereby some degree of decentralization would be introduced, for example, conducting vote counting at the district level.

11. The EAC has considered the suggestion. It does not favour vote counting at district level, mainly due to the following considerations:

- (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.

12. The 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. The EAC believes that the secrecy of votes will be maintained under the decentralized counting arrangement. For small polling stations with less than 200 electors, the ballot papers will be delivered to a main counting station in which the ballot papers cast at the small polling station and the main counting station will be mixed before the votes are counted.

13. The EAC considers that if the status quo is maintained, i.e. conducting vote counting at five regional counting stations, 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.

14. Thus, the EAC takes the view that the way forward should be to decentralize counting to individual polling stations.

Registration and Electoral Office

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