

**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 8 June 2004 regarding:

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

**Decentralised Counting Arrangements for GCs**

2. At the last Subcommittee meeting, most members supported the proposed decentralized counting arrangements for GCs, although a few of them expressed concern that the arrangement might reveal the preferences of voters of individual polling stations. To address such concern, some Members suggested that EAC consider 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.

3. As explained to Members before, the EAC does not consider that the secrecy of votes will be compromised under the decentralized counting arrangement. However, to meet Members’ concern, the 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 coming Legislative Council (LegCo) election. The EAC considers that the operational implications associated with the transportation of ballot boxes from these 17 polling stations to the main counting stations manageable. Amendments will be proposed to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the “Amendment Regulation”) to provide for the increased threshold.

## **Prevention of the Use of Camera-equipped Mobile Telephones in Voting Compartments**

### Switching Off of Mobile Telephones

4. To address Members' concern over the use of camera-equipped mobile telephones in voting compartments, the EAC proposed at the last meeting that, in the coming LegCo election, a general direction be given to all electors requiring them to switch off their mobile telephones when they were inside a polling station, regardless of whether telephones were camera-equipped. Members generally had no objection to the proposal. To provide the legal basis for implementing this measure, the EAC proposes to add a new subsection 45(1)(aa) to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (the "Regulation"). The suggested wording is shown at the Annex, subject to further refinement by the Law Draftsman.

5. To complement this measure, 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 the electors of the requirement. In addition, we will publicize the new arrangement before polling day so that electors are aware of it.

### Penalty Level

6. At previous Subcommittee meetings, Members suggested increasing the penalty under section 45 of the Regulation. The current penalty for committing an offence under section 45 is a fine at level 2 (i.e. \$5000) and imprisonment for three months. 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 was punishable, upon conviction, 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.

7. Having considered Members' suggestion, the EAC proposes to increase the term of imprisonment for committing the offences under section 45(1) (for example, leaving the mobile telephones switched on contrary to the direction of polling staff) and 45(2) (i.e. filming, taking photographs or making any audio or video recording within a polling station without express permission) from 3 months to 6 months. The EAC also proposes to increase the imprisonment term from three months to six months for offences under

section 96 of the Regulation, which specifically deals with the secrecy of votes. The fine level under section 96 will remain at level 2 (i.e. \$5000).

8. The increase in penalty level will further enhance the deterrent effect of the law and demonstrate the EAC's determination to preserve the secrecy of votes. Amendments to the Regulation will be proposed accordingly.

#### Removal of Curtains in Front of the Voting Compartments

9. In the light of Members' concern, the EAC proposed at the last meeting 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. At the last meeting, a few Members expressed reservation over the proposal on the ground that the secrecy of votes might be compromised. As a yellow line will be marked on the floor beyond which no other electors will be allowed to enter or stay when an elector is marking the ballot paper inside the voting compartment, the EAC considers that the proposal will not compromise the secrecy of votes. In response to Members' comments, the EAC proposes 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.

Registration and Electoral Office  
16 June 2004

**Annex**

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

***Section 45(1)&(2) What constitutes an offence at a polling station***

(1) Subject to subsection (6), if on polling day, within a polling station, a person-

- (a) communicates with an elector or an authorized representative; ~~or~~  
(aa) switches on a mobile telephone in his possession or leaves a mobile telephone in his possession switched on; or
- (b) uses a mobile telephone, paging machine or any other device for electronic communication,

contrary to a direction of the ~~Presiding Officer~~ Returning Officer, Assistant Returning Officer, Presiding Officer, Deputy Presiding Officer or Assistant Presiding Officer or any polling officer not to do so, that person commits an offence.

(2) A person who, on polling day, films or takes photograph or makes any audio or video recording within a polling station without-

- (a) the express permission of –
  - (i) the Presiding Officer; or
  - (ii) any member of the Commission; or
- ~~(b) the express permission, in writing, of the Returning Officer for –
  - (i) the constituency or constituencies for which the polling station is used for polling; or
  - (ii) the Election Committee election, if the polling station is used for polling for that election.~~

(b) the express permission, in writing, of the Returning Officer for the constituency or constituencies for which the polling station is used for polling,  
commits an offence.