

**Subcommittee on Three Regulations under the
Electoral Affairs Commission Ordinance gazetted on 19 May 2006**

**Response to issues raised by Members
at the meeting on 7 June 2006**

Introduction

This paper sets out the Administration's response to the issues raised by Members of the Subcommittee at its first meeting held on 7 June 2006.

Election Advertisements

2. At the meeting on 7 June, Members of the Subcommittee raised a number of questions relating to the display of certain types of election advertisements ("EAs") in a no canvassing zone ("NCZ") and a polling station.

3. According to section 2(1) of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO"), "election advertisement", in relation to an election, means —

- “(a) a publicly exhibited notice; or
- (b) a notice delivered by hand or electronic transmission; or
- (c) a public announcement made by radio or television or by video or cinematographic film; or
- (d) any other form of publication,

published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election;”

According to the same section of the ECICO, “publish” means “print, exhibit, distribute, post up, publicly announce or make publicly known by any other means, and includes continue to publish”. Therefore, EAs as defined in the ECICO have a broad coverage.

4. The Electoral Affairs Commission Ordinance (“Cap. 541”) and the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (“Cap. 541I”), when defining the term “EAs”, provides that it has the meaning assigned to it by section 2(1) of the ECICO. There are provisions in Cap. 541I which prohibit the display and exhibition of EAs in an NCZ and a polling station. Section 40(14)(a) prohibits any person from engaging in canvassing for votes in an NCZ on the polling day. Section 45(3) states that a person who, on polling day, engages in canvassing for votes or displays an EA within a polling station commits an offence. The prohibition in sections 40(14)(a) and 45(3) covers all forms of EAs.

5. The operational experience of the Registration and Electoral Office (“REO”) over the years is that from time to time voters may inadvertently display EAs when entering an NCZ or a polling station. Usually the voters will have no difficulty putting away the EAs when asked to do so by the polling staff. However, where the EAs are clothing, badge or emblem which the voters are wearing, it may not be easy for the voters to remove them on the spot. In such circumstances, the polling staff could turn the voters away, but this might cause great inconvenience to voters who are genuinely ignorant of the legal requirement.

6. Thus, the existing sections 40(14)(d) and 45(5) of Cap. 541I may provide a “let out” so that a person with a reasonable excuse may put on or wear clothing, badge or emblem (which may be regarded as EAs) in an NCZ or a polling station. The current proposal to add “head-dress” to these two “let out” provisions is put forward in the light of recent experiences in elections.

Revoking appointment of staff assisting in the conduct of elections

7. The Administration was requested to consider adding “sufficient or reasonable cause” as a condition for the Chief Electoral Officer (“CEO”) revoking the appointment of a Presiding Officer or polling officer under the proposed section 34(3), and for revoking the appointment of a counting officer under proposed section 65(4).

8. The REO has considered the suggestion. Under administrative law principle, a public officer must act reasonably when exercising his power conferred by the law, and his decision is subject to judicial review. This principle applies to the CEO when he exercises his power to revoke any appointment, irrespective of whether the proposed rider is added to the

proposed sections 34(3) and 65(4).

9. There is no absolute necessity to add any condition to the text of the statute. However, we have no strong views to adding “with reasonable cause”, if Members do wish to make this clear as a condition for the CEO to revoke the appointment of a Presiding Officer, a polling officer or a counting officer.

Definition of “political body”

10. At the meeting on 7 June, Members of the Subcommittee asked whether there was any difference between the definition of “political body” in section 2 of the principal ordinance and section 1 of Cap. 541I.

11. Cap. 541 provides in its section 2 that “political body” means —

- (a) a political body or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election.

12. Cap. 541I provides in its section 2 that the term has the meaning assigned to it by section 2(1) of the Societies Ordinance (“Cap. 151”). Section 2(1) of the Societies Ordinance provides that “political body” means —

- (a) a political party or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election.

13. Therefore, the definitions of the term “political body” in Cap. 541 and Cap. 541I are effectively the same.

Use of disjunctive word in section 77(1)

14. The Administration was requested to clarify whether the conjunctive word “and” should be replaced by the disjunctive word “or” in section 77(1)(g).

15. Section 77(1) sets out the types of ballot papers the votes recorded on which are not to be counted. We have reviewed the proposed provision and are of the view that the use of the word “and” is appropriate in the context. Nevertheless, Department of Justice’s advice is that the wording of the leading clause could be further refined so as to make the whole provision even clearer. The proposed provision, with further amendments marked up, is as follows :

“Upon counting of votes, ~~a ballot paper of any of the following descriptions is the following ballot papers are~~ not to be regarded as valid and the votes recorded on the ballot papers ~~is are~~ not to be counted —

(a)

.....

(g), and

(h)

Proposed Amendments

16. To facilitate Members’ examination, we have set out the amendments mentioned in paragraph 15 in the draft Resolution at **Annex A**. The opportunity is also taken to rectify a minor textual error in the amendment to section 100 of the Chinese version of Cap. 541I which is also set out in the draft Resolution at Annex A. To facilitate Members’ examination, an extract of Cap. 541I showing the proposed amendments is attached at **Annex B**.

Registration and Electoral Office
June 2006

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2006

Resolution made and passed by the Legislative Council under section 34(2)
of the Interpretation and General Clauses Ordinance (Cap. 1) on 2006.

RESOLVED that the Electoral Affairs Commission (Electoral Procedure)
(Election Committee) (Amendment) Regulation 2006, published in
the Gazette as Legal Notice No. 114 of 2006 and laid on the table
of the Legislative Council on 24 May 2006, be amended –

(a) in the English text, by repealing section 16(2) and
substituting –

“(2) Section 77(1) is amended by repealing
“The votes recorded on the following ballot papers are”
and substituting “Upon counting of votes, a ballot paper of
any of the following descriptions is not to be regarded as
valid and the vote recorded on the ballot paper is”.”;

(b) in section 22(2), in the Chinese text, by repealing
everything after “修訂，” and substituting “廢除“ 或銷
毀或” 而代以“ 該選舉廣告，亦可銷毀、塗掉或” 。”.

Clerk to the Legislative Council

2006

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

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77. Ballot papers the votes recorded on which are not to be counted

(1) ~~The votes recorded on the following ballot papers are~~ Upon counting of votes, a ballot paper of any of the following descriptions is not to be regarded as valid and the vote recorded on the ballot paper is not to counted-

- (a) on which there is writing or a mark by which the voter can possibly be identified;
- (b) which has the words "重複" and "TENDERED" endorsed on the front of it;
- (c) which has the words "未用" and "UNUSED" endorsed thereon;
- (d) which has the words "損壞" and "SPOILT" endorsed on the front of it;
- (e) which is substantially mutilated;
- (f) which is unmarked;
- (g) subject to subsection (2), which is not marked in accordance with section 56; and
- (h) which the Returning Officer determines as being void for uncertainty.

100. 選舉廣告

(14) 如本條的規定並未有就任何在展示中的選舉廣告而獲得遵從,則選舉主任 或獲該主任授權的任何人可檢取及處置 或銷毀或該選舉廣告,亦可銷毀、塗掉或以其認為以該主任或該獲授權的人認為合適的物料覆蓋該選舉廣告。