

## **Legislative Council Panel on Constitutional Affairs**

### **Amendments to subsidiary legislation for the 2006 Election Committee Subsector Elections**

#### **Introduction**

This paper informs Members of the scope of amendments proposed to be made by the Electoral Affairs Commission ("EAC") to the subsidiary legislation under the EAC Ordinance (Cap 541) to prepare for the coming Election Committee ("EC") subsector ordinary elections to be held in December 2006.

#### **Background**

2. The coming EC subsector ordinary elections will be held in December 2006. The Registration and Electoral Office ("REO") has reviewed the regulations under the EAC Ordinance and has identified that amendments under the following three categories will be required :

- (a) amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006, which was introduced into the Legislative Council on 8 March 2006;
- (b) amendments to align the electoral procedures for EC subsector elections, where appropriate, with those for the LegCo election in 2004; and
- (c) technical amendments to remove obsolete provisions.

3. The amendments involve the following three regulations under the EAC Ordinance :

- the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation

("Cap 541B");

- the EAC (Nominations Advisory Committees (Election Committee)) Regulation ("Cap 541H"); and
- the EAC (Electoral Procedure) (Election Committee) Regulation ("Cap 541I").

### **Scope of amendments**

#### **(a) Amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006**

4. Paragraphs 5 to 7 below set out the main areas in the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006 ("the Bill") which, if approved, will entail consequential amendments to Cap 541B, Cap 541H and Cap 541I.

5. Firstly, the Bill proposes to add a new section to the Schedule to the Chief Executive Election Ordinance ("CEEO") (Cap 569). This new section (section 18A) provides that, if a person is not a member of the District Councils, or a Hong Kong member of the National Committee of the Chinese People's Political Consultative Conference, or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the Heung Yee Kuk, he is not qualified to be nominated as a candidate at an election of the respective subsectors, or be elected as a member of the respective subsectors.

6. The existing section 13 of Cap 541I requires the returning officer (RO) to decide, upon his receipt of a nomination form for a subsector election, whether the candidate is validly nominated in compliance with the relevant sections of the Schedule to the CEEO. Upon adding the proposed section 18A to the Schedule to the CEEO (as per paragraph 5 above), section 13 of Cap 541I will need to be amended correspondingly to require the RO to take this new section into account as well when deciding whether a nomination is valid.

7. Secondly, the Bill proposes to provide for the introduction of an "interim register" ("IR"), which will be compiled and published within seven days after the results of EC subsector ordinary elections are published, and revise the timing for compiling and publishing the "final register" ("FR")<sup>1</sup>. At present, there are certain sections in Cap 541B and Cap 541H which make reference to the FR. Consequential amendments will be required to replace such references by "interim register" or "interim register or final register" as appropriate.

**(b) Amendments to align electoral procedures for EC subsector elections with those for LegCo election**

8. The REO has reviewed the electoral procedures for the EC subsector elections, as set out in Cap 541I, and identified areas where the electoral arrangements should tally with those for the LegCo election in 2004. These include, among others, electoral arrangements which facilitate the counting of votes, and increase in the penalty for unauthorised filming, photographing, audio / video recording within a polling station. Details of the main amendments, mostly technical in nature, are set out in the **Annex**.

**(c) Other technical amendments**

9. REO also proposes to remove all relevant provisions in Cap 541B which make reference to the LegCo functional constituency provisional register and the EC subsector provisional register in 2003,

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<sup>1</sup> According to the proposed revised timing, an FR of members of the EC shall be compiled and published on the date when the term of office of the EC commences. An FR shall also be compiled and published within 7 days after the results of a subsector by-election are published, or after a nominee is declared as an EC member following supplementary nomination of the religious subsector.

The introduction of an "interim register" and the revision to the timing for compiling and publishing the FR is to address the problem arising from the situation that the FR of the existing EC will cease to have effect (if the above revision is not made) before the expiry of its term, while the FR of the new term EC will take effect before the commencement of its term. For details, please refer to the Legislative Council Brief issued on 1 March 2006 on the Bill.

which are now obsolete<sup>2</sup>.

### **Legislative Timetable**

10. REO will finalise the amendments to the regulations in the light of the outcome of LegCo's consideration of the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006. Thereafter, the relevant amendment regulations will, subject to approval by EAC, be published in the Gazette and tabled in the Council for vetting in May 2006. We hope that the vetting procedure can be completed by July 2006, so as to allow sufficient lead time for EAC and REO to prepare for the EC subsector ordinary elections in December 2006.

Registration and Electoral Office  
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<sup>2</sup> Provisions have been made in Cap 541B regarding the functional constituency provisional register and subsector provisional register in 2003 to cater for the exceptional circumstances arising from the revision of the voter registration cycle taking effect from that year. Such provisions are no longer applicable to subsequent years.

**Main Amendments to the EAC (Electoral Procedure) (Election Committee) Regulation (Cap 541I) to align with similar provisions in another EAC regulation (ie Cap 541D) governing the conduct of the Legislative Council (LegCo) elections**

**Revoking appointment of staff assisting in the conduct of elections**

1. Make clear that the power of the Chief Electoral Officer (CEO) to appoint Presiding Officers (PrO), Polling Officers (PO) and counting officers also includes the power to revoke the appointments if he considers the appointees no longer suitable to discharge the duties. *[Relevant corresponding section in Cap 541D for LegCo elections : Sections 34(3) and 67(4).]*

**Election advertisements**

2. Provide that, in addition to the RO, other persons authorised by the RO may also seize and dispose of, destroy, or obliterate, or cover election advertisements not complied with the legal requirements. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 102(15).]*

**No Canvassing Zone (NCZ) / No Staying Zone (NSZ)**

3. Advance the deadline for the RO to notify candidates on the determination of NCZ and NSZ from "5 days" to "7 days" before polling day. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 40(7).]*
4. Require that canvassing activity on polling day should be conducted in such a way that its sound cannot be heard in the NCZ. *[Relevant corresponding section in Cap 541D for LegCo elections : Sections 40(16)(aa) and 41(1)(aa).]*

5. Make clear that, whilst the restriction on canvassing activities in a NCZ does not apply to a building in a NCZ with no polling station in it, whether a person may canvass for votes from door to door in such a building is still subject to whether he is allowed to enter the building for the purpose of canvassing. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 40(17).]*
6. Provide that, in addition to the RO, a PrO authorised by the RO may also vary the NCZ and NSZ on the polling day. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 92(2).]*
7. Provide that, in addition to the RO, a PrO may also publish or display notice, determination or other writing under the Regulation (eg notice of variation in the NCS and NSZ) in a manner he thinks fit. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 98.]*

### **Polling stations**

8. Make clear that Police officers, members of the Civil Aid Service and persons authorised by RO to act as liaison officers may not be excluded from polling stations. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 44(4)(i) and (j).]*
9. Provide that, in addition to the PrO, other officers (ie RO, Assistant RO and PO) may also direct a person not to communicate with voters / authorised representatives or use any device for electronic communication within a polling station. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 45(1).]*
10. Increase the penalty for unauthorised filming, photographing, audio / video recording within a polling station, in respect of imprisonment, from 3 months to 6 months. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 45(7)(a).]*

## **Counting of votes**

11. Rationalise the deadline for the RO to send a written notice of time and place of vote counting to each of the candidates, their election agents or counting agents, by changing the deadline from "24 hours in advance" to "one working day before the polling day", so as to ensure that the recipients will be properly notified. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 65(5).]*
12. Advance the deadline for a candidate to notify the RO of his appointment of any counting agent from "3 working days before the polling day" to "one week before polling day" to provide sufficient time for RO to make the necessary arrangements. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 66(5).]*
13. Allow ballot papers clearly invalid by their nature (ie those ballot papers (a) with the words "TENDERED", "UNUSED" or "SPOILT"; (b) unmarked; or (c) not marked by shading the ovals or with the chop provided where appropriate) to be regarded as invalid and not to be counted. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 77(7)(b).]*
14. Make clear that the scope of questionable ballot papers to be determined by the RO includes those on which there is writing or a mark by which the voter can "possibly" be identified. *[Relevant corresponding section in Cap 541D for LegCo elections : Sections 77(7)(a).]*
15. Provide that, in addition to the candidate and the election agent, a counting agent may also inspect questionable ballot papers set aside by the RO and make representations to the RO, or raise objections to RO's decisions to accept or reject a questionable ballot paper. *[Relevant corresponding section in Cap 541D for LegCo elections : Sections 81(1), 81(4) and 81(5).]*

16. Make clear that the RO has the flexibility to count the vote for a ballot paper, albeit not properly marked in certain manners, if he is satisfied that the intention of the voter / authorised representative is clear. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 81(3).]*
17. Require an election agent, same with other relevant persons, to make a declaration of secrecy before entering the counting station to attend the counting of votes. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 95(2).]*
18. Increase the penalty for violation of secrecy of vote, in respect of imprisonment, from 3 months to 6 months. *[Relevant corresponding section in Cap 541D for LegCo elections : Section 96(10).]*

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