

Legislative Council Panel on Constitutional Affairs

Exit Polls

PURPOSE

This paper sets out for Members' reference the existing regime regarding the regulation of exit polls and the issues relating to exit polls in the 2008 Legislative Council ("LegCo") Election.

THE ELECTORAL GUIDELINES

2. Under section 6(1) of the Electoral Affairs Commission Ordinance (Cap. 541), the Electoral Affairs Commission ("EAC") may issue guidelines ("the Guidelines) relating to the conduct or supervision of an election. The aim of the Guidelines is to provide a code of conduct, based on the principle of fairness and equality, for conducting election-related activities, and to provide directions in layman's language on how to comply with the relevant electoral legislation, so that candidates and other interested parties can avoid breaching the relevant provisions inadvertently.

3. The Guidelines set out, amongst others, the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors.

TIGHTENING OF CONTROL AND ENHANCING TRANSPARENCY OF EXIT POLLS

4. In line with the established practice and in accordance with the electoral legislation, the EAC reviewed the Guidelines and consulted the public on the proposed amendments in March - April 2008 in preparation for the 2008 LegCo Election. In response to opinions regarding the conduct of exit polls, the EAC proposed a number of measures to step up control on the conduct of exit polls and to enhance the transparency of the organisations or persons with approval to conduct exit polls. These measures include:

- (a) to require the organisations/persons intending to conduct exit poll to apply to the Registration and Electoral Office ("REO") ten days, instead of seven days, before the polling day;

- (b) to require the organisations/persons intending to conduct exit polls to sign an undertaking to abide by the guidelines governing the conduct of exit poll;
- (c) in addition to the established practice of releasing a list of persons or organisations allowed to conduct exit poll to the public prior to the polling day and to display the list at the respective polling stations on the polling day, the contact telephone numbers of the responsible persons will also be released and displayed for the reference of the public and candidates; and
- (d) to require interviewers to display prominently an identification device showing the identity of the organisation/person conducting exit poll so that electors will not be misled into thinking that they are appointed by Government, to require the interviewers to make known to the electors that any response is entirely voluntary, and to make arrangements for electors to be aware of the name of the organisation/person conducting the interview and the fact that the exit poll is not commissioned by the Government.

5. If a person or an organisation allowed to conduct exit poll fails to comply with the terms of the undertaking and the relevant guidelines, the approval to conduct exit poll on the polling day or during the polling hours may be revoked. A reprimand or censure in a public statement which includes the name of the infringing person or organisation may also be issued.

6. An extract from the finalised Guidelines for LegCo elections is at **Annex.**

THE 2008 LEGCO ELECTION

7. In the 2008 LegCo Election, approval was given to six organisations to conduct exit polls upon application. The list of these organisations was uploaded to the website for the 2008 LegCo Election. The list was also displayed prominently outside the relevant polling stations.

8. On 2 September 2008, an organisation intending to conduct exit polls in the 2008 LegCo Election announced to the media that it would advance the release of the exit poll results to its media sponsors from 9:00 pm to 12:30 pm on the polling day. The intention of the organisation aroused considerable concern from the public as premature disclosure of exit poll results would influence electors' voting preference.

9. In view of the concerns over the conduct of exit polls, the EAC issued a public statement on 2 September 2008 stressing that the EAC attached great importance to ensuring that all public elections were held in an open, fair and honest manner and would closely monitor the election on the polling day. The EAC also reminded the media and the organisations concerned that they should comply with the Guidelines at all times. On 3 September 2008, the same organisation announced that it would only release the exit poll results to media sponsors at 8:00 pm (and not 12:30 pm) on the polling day.

WAY FORWARD

10. The EAC would continue to listen to the views concerning exit polls and consider the matter when the Guidelines are updated prior to the next general election, along with other electoral arrangements.

Constitutional and Mainland Affairs Bureau
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CHAPTER 15

EXIT POLL

PART I : GENERAL

15.1 This chapter sets out the guidelines for the conduct, publication and broadcast of exit polls to avoid unfair interference with the election process by unduly influencing electors. The aim is to ensure that elections are conducted honestly and fairly.

15.2 The EAC appeals to the media and organisations concerned for self-regulation, goodwill and voluntary cooperation in the conduct of exit polls, and the publication and broadcast of the result of exit polls so that elector behaviour will not be unduly affected.

PART II : SECRECY OF THE VOTE

15.3 **The ballot is secret.** It is an elector's right to keep his vote secret. An elector does not have to disclose his choice of candidate/GC list if he does not want to. **It is a criminal offence for a person, without lawful authority, to require, or purport to require, an elector or authorised representative of a corporate elector to disclose the name of, or any particular relating to, the candidate/GC list for whom the elector/ authorised representative of a corporate elector voted at an election [s 60 of the LCO and s 96 of the EAC (EP) (LC) Reg].** Those who conduct exit polls must respect the electors' right and wish not to be disturbed. The

interviewers should inform the electors being interviewed that their participation in the exit poll is voluntary prior to the conduct of exit poll. *[Amended in October 2007 and July 2008]*

15.4 Any announcement of results of exit polls or predictions, particularly in relation to any individual candidate or GC list, during the polling hours may affect elector behaviour and have an impact on election results. **The EAC, therefore, reminds the media and organisations concerned that they should not announce the results of exit polls or make specific remarks or predictions on the performance of individual candidate or GC list before the close of poll.** *[Amended in July 2008]*

15.5 Broadcasters' attention is invited to the provisions of the Television and Radio Code of Practice on Programme Standards which require news and current affairs programmes to be fair, objective and impartial.

PART III : CONDUCT OF EXIT POLLS

15.6 Exit polls may be conducted by any person or organisation. For the purpose of better control of the conduct of exit poll, persons or organisations intending to conduct exit polls must provide the following to REO **at the latest 10 days before the polling day:** *[Amended in July 2008]*

- (a) the name and address of the person or organisation intending to conduct exit poll on the polling day;
- (b) the identity document number and name of the person responsible together with his telephone number(s) for contact, especially for the polling hours; and

- (c) a list showing the number of persons who will be employed for the conduct of the exit poll at each polling station on the polling day together with the identity document number and name of each of all the persons who will be so employed.

15.7 On the receipt of the application, the REO will consider the application and issue approval to the concerned person or organisation as appropriate. Before the grant of approval, the person or organisation allowed to conduct exit poll will be required to sign an **undertaking** to abide by the guidelines governing the conduct of exit poll. If a person or an organisation who/which fails to comply with the terms of the undertaking and the guidelines set out in this chapter, the approval to conduct exit poll on the polling day or during the polling hours may be revoked. The EAC may also make a reprimand or censure in a public statement which will include the name of the person or organisation who/which fails to comply with the terms of the undertaking/guidelines. A list of persons or organisations allowed to conduct exit poll together with their contact telephone numbers will be released to the public prior to the polling day for the reference of the public and candidates. Such a list will also be displayed at the respective polling stations. *[Amended in July 2008]*

15.8 Interviews are not allowed inside polling stations. Interviewers should note that canvassing activity is prohibited under criminal sanction within the NCZ except door-to-door canvassing activities on the storeys above or below street level in a building other than one in which there is a polling station provided that permission has been obtained for entry to the building for canvassing votes, and that obstruction is not posed to electors and no sound amplifying device is used. Interviewers must therefore be extremely careful in conducting exit poll so as not to give rise to any suspicion that they are canvassing electors inside the NCZ. Interviewers, like any other person, are not allowed to stay or loiter in the areas designated as the NSZ (within the NCZ

but immediately outside the entrance/exit to each polling station) [s 41 of the EAC (EP) (LC) Reg]. Interviewers are also not allowed to accost electors in the NSZ. All these measures are for the purpose of securing safe and smooth passage of electors into and out of polling stations. The PRO of a polling station may, if circumstances require, designate an area outside the exit of the polling station so that interviewers may only conduct exit poll within that area. *[Amended in October 2007]*

PART IV : IDENTIFICATION OF INTERVIEWERS

15.9 There had been occasions where exit poll interviewers were mistaken to be government officials or polling staff. Such interviewers are therefore required to display prominently an identification device showing the identity of the organisation/person conducting exit poll so that electors will not be misled into thinking that they are appointed by Government. In addition, the interviewers are required to make known to the electors that any response is entirely voluntary. Arrangements should be made for electors to be aware of the name of the organisation/person conducting the interview and the fact that the exit poll is not commissioned by the Government. *[Amended in July 2008]*

15.10 After receipt of the information referred to in para. 15.6 above, the REO will notify the organisation or person concerned to collect a number of identification device bearing the name of the organisation/person that is required to be displayed prominently by each of the persons included in the list in para. 15.6(c) above when conducting an exit poll. Any person not displaying prominently such a device will not be allowed to conduct an exit poll outside any polling station. *[Amended in July 2008]*

PART V : SANCTION

15.11 Apart from the criminal sanction provided in the LCO, if the EAC comes to know that any broadcaster or organisation has failed to heed or comply with the guidelines in this chapter, it may make a **reprimand** or **censure** in a public statement which will include the name of the broadcaster or the organisation concerned. *[Amended in July 2008]*