

**Legislative Council Panel on Constitutional Affairs**

**Date for postponed or adjourned elections of the District Councils,  
the Legislative Council and Village Representatives**

**PURPOSE**

Members are invited to give views on a proposal to change the fallback day arrangements for the Legislative Council (LegCo), District Council (DC) and Village Representative (VR) elections from two days to 14 days, in the event that it is necessary to postpone the election or postpone/adjourn the poll or the count due to an occurrence which appears to be a material irregularity relating to the election, the poll or the count.

**BACKGROUND**

**Existing provisions**

2. Under the existing electoral law governing the LegCo, DC and VR elections, an election, a poll or a count may be postponed or adjourned if it appears to the Chief Executive, the Electoral Affairs Commission, the Presiding Officer or the Returning Officer (as the case may be) that the election, the poll or the count is likely to be obstructed, disrupted, undermined or seriously affected by -

- (a) a typhoon or other climatic condition of a serious nature;
- (b) riot, open violence or other occurrence of public danger;  
or
- (c) an occurrence which appears to be a material irregularity relating to the election, the poll or the counting of votes.

For scenario (a) and (b) above, the existing provisions require that the postponed/adjourned election, poll or count be held **not later than 14 days** from the date on which it would have been held. For scenario (c), the timeframe allowed under the relevant provisions requires that the election, poll or count be conducted or resumed **not later than two days** (“the two-day fallback arrangement”). A summary of the existing fallback day arrangements for the LegCo, DC and VR elections with the relevant provisions in the electoral law is at the **Annex**.

### **Legislative history**

3. The fallback day arrangement stated in paragraph 2 above could be traced back to the Boundary and Election Commission Ordinance (Cap. 432) and the regulations<sup>1</sup> made under it. While the then Governor had the power to declare the postponement or adjournment<sup>2</sup> of an election, a poll or a count in case of serious emergencies, e.g., widespread riots, the Boundary and Election Commission (BEC) was vested with the power to postpone or adjourn an election, a poll or count in other situations. The Ordinance also set out that the BEC could make regulation to provide for a postponement or adjournment of an election, poll or count up to two days on the ground of a material irregularity relating to an election, poll or count. In the case of a postponement or adjournment for reason other than a material irregularity, the postponed or adjourned election, poll or count was to be held or resumed “not later than 14 days from the date on which the election, poll or count would have been held if not for such postponement or adjournment.”

### **Overseas experience**

4. We have surveyed how some overseas jurisdictions deal with an election, a poll or a count when an emergency situation occurs. In the

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<sup>1</sup> The Ordinance was subsequently not adopted as the Laws of the Hong Kong Special Administrative Region.

<sup>2</sup> In the English version of the legislative provisions, a “postponement” is declared before the holding of an election, while an “adjournment” is declared during a poll or a count. In the Chinese version of the legislative provisions, “押後” stands for “postponement” and “adjournment”.

United Kingdom (UK), at the national level the ordinary day for general elections<sup>3</sup> is the first Thursday of May every five years under the Fixed-term Parliaments Act 2011. The Prime Minister may by order provide that the polling day for a parliamentary general election in a specified calendar year to be held later than the first Thursday in May, but not more than two months later. At the local level, local elections<sup>4</sup> take place on the first Thursday of May every year. If it is not held on the first Thursday in May, the day may be fixed by the Secretary of State. In the years in which a general election is held, it is the usual practice to hold both the general and local elections on the same day. For example, in 2001, the then Prime Minister Tony Blair postponed the general and local elections for one month due to the foot-and-mouth disease outbreak.

5. In Australia, at the national level the electoral legislation provides for the adjournment of polling for up to 21 days, where polling is interrupted by various factors<sup>5</sup>. At the state/territory level, the rules in each of the Australian states and territories differ. For example, South Australia, the Australian Capital Territory and Tasmania allow adjournment of polling where it is not practical to proceed and the polling can be adjourned for up to 21 days. In Queensland and the Northern Territory, polling may be adjourned by up to 34 days or 21 days respectively for reasons of storm, tempest, flood, fire or a similar happening, or riot or open violence.

## **A REVIEW OF THE SITUATION IN HONG KONG**

6. In Hong Kong, the Registration and Electoral Office (REO) is responsible for conducting the LegCo and DC elections, and the Home Affairs Department (HAD) is responsible for conducting the VR elections. The REO and the HAD, in making preparations for an election, need to draw up contingency plans to cater for different

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<sup>3</sup> “General elections” in the UK refers to the election of Members of Parliament to the House of Commons.

<sup>4</sup> “Local elections” in the UK refers to county, unitary authority, borough, district, city, town and parish elections.

<sup>5</sup> Factors include (a) riot or open violence; or (b) the threat of riot or open violence; or (c) storm, tempest, flood or an occurrence of a similar kind; or (d) a health hazard; or (e) a fire or the activation of fire safety equipment (such as sprinklers or alarms); or (f) anything else related to the safety of voters or the difficulties in the physical conduct of the voting.

scenarios including the possibility that the election, the poll or the count may have to be postponed or adjourned. At present, the LegCo and DC elections are held on single Sundays, while the VR elections are held on four consecutive Sundays. Having thoroughly reviewed past experience and present day circumstances, the REO and the HAD consider that there are insurmountable practical difficulties to implement the two-day fallback arrangement. The difficulties are set out in paragraphs 7 to 10 below.

### **Constraints in availability of venues for polling/counting**

7. The majority of the polling stations are set up in school premises or village offices which are normally not available for use as polling stations on weekdays. Under the two-day fallback arrangement, the election, the poll or the count has to be conducted or resumed on either the Monday or Tuesday immediately following the original polling day. Past experiences show that the REO and the HAD have great difficulty in block booking a consecutive three-day period. For example, in the 2011 DC and 2012 LegCo elections, out of the more than 500 polling stations, only about one-fifth of them could be made available for use if the postponed or adjourned election, poll or count had to be held or resumed within two days. Therefore, in the event that the two-day fallback arrangement needs to be triggered, a large number of electors will have to be re-assigned to polling stations which are different from the ones originally allocated to them. Such a reassignment exercise would in any case be almost impossible to execute because of the tight timeframe, not to mention the confusion it would cause to the electors.

8. Similar difficulties exist for the VR elections. For the 2011 VR election, the 119 polling stations were mainly schools and village offices which were in close proximity to the villages concerned. To avoid disrupting the normal operation of schools and local organisations in the vicinity of the villages on weekdays, among the 18 fallback venues reserved for the consecutive Tuesdays, 17 were community halls, indoor recreation centres or venues located in town centres which were far away from the villages concerned.

## **Constraints in availability of electoral staff**

9. Recruitment of electoral staff from the civil service has all along been another major constraint in past elections given the large number of staff required. Experiences of the past LegCo and DC elections indicate that only a very small number of electoral staff from Government bureaux/departments are prepared to take up electoral duties on weekdays should the election, poll or count need to be postponed or adjourned. If the REO is to require all electoral staff to make themselves available on both the original polling day as well as the two-day fallback date for the LegCo and DC elections, we envisage that recruitment of polling and counting staff would run into serious difficulties. For the VR elections, all polling staff are currently drafted from within the HAD. Conducting polling on Mondays or Tuesdays will seriously disrupt the normal operation of the Department, and the district offices have difficulty to release staff to perform electoral duties during weekdays without causing major disruptions to their ongoing functions and services.

## **Constraints in logistical arrangements**

10. The nature of a material irregularity relating to the election, the poll or the counting of votes is difficult to predict. Should such an irregularity arise, we cannot presume that the problem can always be resolved in time for the electoral process to resume within two days. Depending on the nature and scale of the irregularity, sufficient time is required for re-doing some, if not all, of the preparatory work such as re-allocation of polling stations for voters, replenishing or re-distributing electoral materials, setting up alternative polling/counting stations, etc. Allowing only two days to cater for all possible scenarios is not prudent or practicable.

## **RECOMMENDATION**

11. Although the two-day fallback arrangement has not been triggered before, given the above constraints and concerns, the arrangement is considered impractical and undesirable. It is recommended that the fallback period in the case of postponement of an

election or postponement or adjournment of a poll or a count in the LegCo, DC and VR elections should in all circumstances be changed from two to 14 days in order to provide sufficient flexibility in conducting or resuming the event, and to be in line with the fallback timeframe in dealing with postponement or adjournment due to a typhoon or other climatic condition of a serious nature, or riot or open violence or other occurrence of public danger.

### **ADVICE SOUGHT**

12. Members are requested to comment on the proposal set out in paragraph 11 above.

Constitutional and Mainland Affairs Bureau  
Registration and Electoral Office  
Home Affairs Department  
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Annex

**Summary of arrangements for resumption of polling and counting  
for LegCo, DC and VR elections**

<b>Scenarios</b>	<b>LegCo Election</b>	<b>DC Election</b>	<b>VR Election</b>
Riot, open violence or any occurrence of public danger	<p>Power to be exercised under s. 44 of Legislative Council Ordinance, Cap. 542 by <b>the Chief Executive:</b></p> <ul style="list-style-type: none"> <li>- Postponement of a general election; and</li> <li>- Adjournment of the polling and counting of votes in respect of a general election.</li> </ul> <p>-----</p> <p>Power to be exercised under Schedule 2 to Electoral Affairs Commission (Electoral Procedure) (Legislative</p>	<p>Power to be exercised under s. 38 of District Council Ordinance, Cap. 547 by <b>the Chief Executive:</b></p> <ul style="list-style-type: none"> <li>- Postponement of an ordinary election; and</li> <li>- Adjournment of the polling and counting of votes in respect of an ordinary election.</li> </ul> <p>-----</p> <p>Power to be exercised under Schedule 1 to Electoral Affairs Commission (Electoral Procedure) (District Council)</p>	<p>Power to be exercised under s. 72, 73 and 77 of Electoral Procedure (Village Representative Election) Regulation, Cap. 541L –</p> <p><b>(a) by the EAC:</b></p> <ul style="list-style-type: none"> <li>- Postponement or adjournment of poll or count in respect of an election.</li> </ul> <p><b>(b) by the Presiding Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of poll at a particular station</li> </ul> <p><b>(c) by the Returning</b></p>

Scenarios	LegCo Election	DC Election	VR Election
	<p>Council) Regulation, Cap 541D –</p> <p>(a) by <b>the EAC:</b> - Postponement of election, adjournment of poll or count in respect of a single constituency</p> <p>(b) by <b>the Presiding Officer:</b> - Adjournment of poll or count at a particular station</p> <hr/> <p>Polling or counting needs to be resumed <b>not later than 14 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<p>Regulation, Cap. 541F –</p> <p>(a) by <b>the EAC:</b> - Postponement of election, adjournment of poll or count in respect of a single constituency</p> <p>(b) by <b>the Presiding Officer:</b> - Adjournment of poll or count at a particular station</p> <hr/> <p>Polling or counting needs to be resumed <b>not later than 14 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<p><b>Officer:</b> - Adjournment of count at a particular station</p> <hr/> <p>Polling or counting needs to be resumed <b>within 14 days</b> after the date on which the postponed or adjourned poll or count would have been held.</p>



<b>Scenarios</b>	<b>LegCo Election</b>	<b>DC Election</b>	<b>VR Election</b>
<p>Typhoon or other climatic condition of a serious nature</p>	<p>Power to be exercised under Schedule 2 to Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Cap 541D –</p> <p><b>(a) by the EAC:</b></p> <ul style="list-style-type: none"> <li>- Postponement of general election and adjournment of poll at all polling stations or count at all counting stations;</li> <li>and</li> <li>- Postponement of election, adjournment of poll or count in respect of a single constituency</li> </ul> <p><b>(b) by the Presiding Officer:</b></p>	<p>Power to be exercised under Schedule 1 to Electoral Affairs Commission (Electoral Procedure) (District Council) Regulation, Cap 541F –</p> <p><b>(a) by the EAC:</b></p> <ul style="list-style-type: none"> <li>- Postponement of ordinary election and adjournment of poll at all polling stations or count at all counting stations;</li> <li>and</li> <li>- Postponement of election, adjournment of poll or count in respect of a single constituency</li> </ul> <p><b>(b) by the Presiding Officer:</b></p>	<p>Power to be exercised under s. 72, 73 and 77 of Electoral Procedure (Village Representative Election) Regulation, Cap. 541L –</p> <p><b>(a) by the EAC:</b></p> <ul style="list-style-type: none"> <li>- Postponement or adjournment of poll or count in respect of an election.</li> </ul> <p><b>(b) by the Presiding Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of poll at a particular station</li> </ul> <p><b>(c) by the Returning Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of count at a particular station</li> </ul>

Scenarios	LegCo Election	DC Election	VR Election
	<p>- Adjournment of poll or count at a particular station</p> <hr/> <p>Polling or counting needs to be resumed <b>not later than 14 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<p>- Adjournment of poll or count at a particular station</p> <hr/> <p>Polling or counting needs to be resumed <b>not later than 14 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<hr/> <p>Polling or counting needs to be resumed within <b>14 days</b> after the date on which the postponed or adjourned poll or count would have been held.</p>
Material irregularity	<p>Power to be exercised under Schedule 2 to Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, Cap 541D –</p> <p>(a) <b>by the EAC:</b></p> <p>- Postponement of general election</p>	<p>Power to be exercised under Schedule 1 to Electoral Affairs Commission (Electoral Procedure) (District Council) Regulation, Cap 541F –</p> <p>(a) <b>by the EAC:</b></p> <p>- Postponement of ordinary election and adjournment</p>	<p>Power to be exercised under s. 72, 73 and 77 of Electoral Procedure (Village Representative Election) Regulation, Cap. 541L –</p> <p>(a) <b>by the EAC:</b></p> <p>- Postponement or adjournment of poll or count in respect of an</p>

Scenarios	LegCo Election	DC Election	VR Election
	<p>and adjournment of poll at all polling stations or count at all counting stations; and</p> <ul style="list-style-type: none"> <li>- Postponement of election, adjournment of poll or count in respect of a single constituency</li> </ul> <p><b>(b) by the Presiding Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of poll or count at a particular station</li> </ul> <hr/> <p>Polling or counting needs to be resumed <b>not later than 2 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<p>of poll at all polling stations or count at all counting stations; and</p> <ul style="list-style-type: none"> <li>- Postponement of election, adjournment of poll or count in respect of a single constituency</li> </ul> <p><b>(b) by the Presiding Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of poll or count at a particular station</li> </ul> <hr/> <p>Polling or counting needs to be resumed <b>not later than 2 days</b> from the date on which the postponed election or adjourned poll or count would have been held.</p>	<p>election.</p> <p><b>(b) by the Presiding Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of poll at a particular station</li> </ul> <p><b>(c) by the Returning Officer:</b></p> <ul style="list-style-type: none"> <li>- Adjournment of count at a particular station</li> </ul> <hr/> <p>Polling or counting needs to be resumed <b>within 2 days</b> after the date on which the postponed or adjourned poll or count would have been held.</p>