

**Bills Committee on Rural Representative Election
Legislation (Amendment) Bill 2013**

Follow-up to the 3rd Meeting on 13 January 2014

Introduction

The 3rd meeting of the Bills Committee on Rural Representative Election Legislation (Amendment) Bill 2013 (the Committee) was held on 13 January 2014. A list of follow-up actions arising from the discussion at that meeting was sent to the Administration on 16 January 2014. This paper sets out the Administration's response to the list of follow-up actions.

(1) Information on the last Kaifong Representative Elections

Cheung Chau

2. The last Kaifong Representative (KFR) election on Cheung Chau was held on 14 November 2010. Among the 8 579 registered electors, 2 505 of them voted, with a turnout rate of 29.2%. The number of votes obtained by the elected persons ranged from 561 to 2 059. Among them, an independent candidate who had not conducted joint electioneering activities was elected with 653 votes. In addition, the other two independent candidates obtained 154 and 54 votes respectively.

Peng Chau

3. The last KFR election on Peng Chau was held on 24 October 2010. Among the 3 068 registered electors, 1 745 of them voted, with a turnout rate of 56.9%. Candidates were divided into two groups on their own to conduct joint electioneering activities. There were elected candidates in both groups and the number of votes obtained by the elected persons ranged from 710 to 1 016 while that of other candidates ranged from 553 to 710.¹

¹ Same as the arrangement for Village Representative elections, the "first past the post" principle is adopted for counting of votes in KFR elections. Since there were two candidates obtaining 710 votes, the election result had to be determined by drawing lots. Hence, an elected candidate and an unsuccessful candidate obtained the same number of votes.

(2) Kaifong Representative Election System

4. The KFR seats of Cheung Chau Rural Committee (RC) and Peng Chau RC were established around the 1950/60s. Cheung Chau and Peng Chau have always been a single constituency and adopted the election system proposed in the Rural Representative Election Legislation (Amendment) Bill 2013. At present, while each KFR elector on Cheung Chau and Peng Chau may vote for not more than 39 and 17 candidates respectively at the same time, the elector also has the right to vote for a smaller number of candidates or even only one candidate.

5. Our legislative principle is to respect and retain the original number of seats and voting method of the KFR election while bringing it under statutory regulation. This is in line with the principle when regulating VR elections by statute in 2003.

6. In paragraphs 8 to 13 of the Government's response to issues raised at the meeting on 3 December 2013 (LC Paper No. CB(2)575/13-14(01)), the Government has given detailed explanation on its position on the election system and the justifications. In sum, Heung Yee Kuk, Cheung Chau RC and Peng Chau RC all support retaining the election system which has been in use for years. Moreover, given the relatively small number of electors in the KFR elections, the elected persons under the election system proposed by the Government may obtain a higher number of votes, thus enhancing their legitimacy and representativeness. Hence, we consider it appropriate to retain the existing election system.

(3) Measures to Verify the Eligibility of Electors and Candidates in KFR Elections

Verification of the Eligibility of Electors

7. As in other public elections regulated by statute, when filling in the application form for voter registration, an applicant is required to sign a declaration that the principal residential address entered on the form is his sole or main home, that since when he has been residing in the Market Town, and that he has been residing in the Market Town for three years immediately before application and is eligible to be registered as an elector. Under section

32(1) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541K), a person who knowingly or recklessly makes any statement in the application form for voter registration which is false or incorrect in a material particular commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for six months. Upon receipt of the application form, if the Electoral Registration Officer is in doubt about the information provided by an applicant, he will make inquiries to the person concerned and require that person to provide proof of address in order to verify his length of residence in Cheung Chau/Peng Chau.

8. Since 2012, we have stepped up our efforts to verify the eligibility of electors to ensure the accuracy of the registers of electors and to prevent potential vote-rigging. We intend to adopt similar measures, as set out below, to applicants and registered electors of Cheung Chau or Peng Chau for KFR elections upon enactment of the Rural Representative Election Legislation (Amendment) Bill 2013:

- (a) cross check whether the addresses provided by applicants are within Cheung Chau and Peng Chau;
- (b) cross check the personal data of electors with the Immigration Department and address records of all electors regularly against the address records of other public authorities (e.g. Housing Department, Housing Society and Registration and Electoral Office);
- (c) conduct random sampling checks on registered electors and applicants by requiring the selected persons to provide documents to verify their addresses; and
- (d) investigate into cases where seven or more electors, or five or more electors with different surnames, register with the same residential address.

Verification of the Eligibility of Candidates

9. To ascertain whether a person is eligible to be nominated as a candidate at a KFR election under the proposed section 22(2A) of Cap. 576, the following measures will be adopted:

- (a) When filling in the nomination form, the person is required to sign a declaration that he is eligible under the proposed section 22(2A) of Cap. 576 to be nominated as a candidate at the election (i.e. including the statement, “ I have been a resident of the Market Town for the six years immediately preceding the nomination and the residence in the Market Town is my principal residential address, which means that the address of the dwelling place at which I reside and which constitutes my sole or main home.”) Under section 90(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L), a person who knowingly or recklessly makes a statement which is false or incorrect in a material particular in any election related document (including the nomination form) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for six months. Upon receipt of the nomination form, the Returning Officer (RO) will check against the candidate’s application form for voter registration to ascertain his years of residence in Cheung Chau/Peng Chau.
- (b) We will check against the final register of electors to ensure the nominated person is a registered elector. We will also check with the Police and the Official Receiver’s Office whether the nominated person has been disqualified from being nominated.
- (c) Upon receipt of complaints against a candidate’s eligibility in the run-up to the election, the RO will make detailed investigation and report to the Electoral Affairs Commission.

10. The above measures for verifying the eligibility of electors and candidates of KFR elections are similar to those currently adopted for Resident Representative elections.

(4) Drafting of Certain Provisions

11. After consultation with the Law Drafting Division (LDD) of the Department of Justice, the Government provides its response to items 4(a) to (f) of the list of follow-up actions concerning the drafting of certain provisions as follows:

Proposed Amendments to the Village Representative Election Ordinance (Cap. 576)

- (a) In the Chinese text, “不得因……而令……有權” is adopted in the new section 15(3A) while “無權憑藉……而有權” is used in the existing section 15(3). Different expressions are adopted in the provisions since LDD has ceased using “憑藉” (by virtue of) in such context and replace it by “因” (because of). The difference in wording in the text does not give rise to interpretation problem. Moreover, when compared with “不得因……而……有權”, “無權因……而有權” is more likely to cause confusion. Hence, we consider it more appropriate to adopt “不得” .

Proposed Amendments to the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541K)

- (b) Taking into account the views of the Committee, we have decided to propose relevant Committee Stage Amendments (CSAs) to the existing section 11(1)(a) and (b) to revise “必須” to “須” to standardise the equivalent of “must” in the Chinese text of various paragraphs of section 11(1). The amendment is in line with the 1st and 2nd bullet points² in paragraph 9.2.18 of *A Guide to Styles & Practices* (January 2012) published by LDD as well as current established practice for drafting other bills by LDD.

Based on the same principle, we have decided to propose CSAs to the existing section 61(1)(a) to (b) and 67(3)(a) to (c) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L) to revise “shall be” to “is to be” or “are to be” to achieve consistency in wording of the various subsections of sections 61(1) and 67(3).

- (c) Taking into account the views of the Committee, we have also decided to propose relevant CSAs to the existing section 18(4)(a)(ii)

² Generally, “must” can be used in new subsections even though “shall” is used in the other subsections of the provision being amended. Avoid using “must” and “shall” in the same subsection. Instead, change the existing references to “shall” to “must”.

to revise “縱使” to “即使” to standardise the equivalent of “despite” in the Chinese text of section 18.

Proposed Amendments to the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L)

- (d) At the meeting of the Committee on 13 January 2014, the Government explained that the adoption of “that is” was grammatically correct and amendment to the provision was not necessary. No Members raised objection at the meeting.
- (e) Taking into account the views of the Committee, we have decided to propose relevant CSAs to the existing section 45(4)(a) to (c), to revise “他” (he) to “該人” (the person) to standardise the wording in section 45(4).

Other Proposed Amendments to the Rural Representative Election Legislation (Amendment) Bill 2013

- (f) In deciding whether to make very specific reference to the provisions in column 1, LDD will consider whether amendments are made to an expression wherever it appears. If that is the case, more general references will be made in column 1 to cut down the number of items of amendments. We consider the reference in the Rural Representative Election Legislation (Amendment) Bill 2013 is already very clear. Furthermore, the suggestion from the Committee and that from LDD only differ in the drafting approach of the Bill. The provisions concerned will become spent upon commencement of the Rural Representative Election Ordinance. Irrespective of the suggestion adopted from any of the parties, the effect of the amendments to the wording in the existing Village Representative Election Ordinance will be completely the same.

**Home Affairs Department
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