

**立法會**  
***Legislative Council***

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**Bills Committee on Electoral Legislation  
(Miscellaneous Amendments) Bill 2014**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper gives a brief account of the concerns raised by the Panel on Constitutional Affairs ("the Panel") during its discussions on the legislative proposals contained in the Electoral Legislation (Miscellaneous Amendments) Bill 2014 ("the Bill").

**Background**

2. To prepare for the coming election cycle, the Administration has reviewed the electoral laws with a view to improving the clarity of the provisions and, where required, refining the procedural requirements in the statutes in the light of the experience gained from previous elections. The review has come up with the following proposals (a) to (h) –

- (a) extension of electoral deadlines in case of inclement weather;
- (b) inclusion of electors who have voluntarily requested voter de-registration in the omissions list;
- (c) handling of applications by existing geographical constituency ("GC") electors for registration in the District Council ("DC") (second) functional constituency;
- (d) removal of the requirement for prior notice of appointment of polling and counting agents;
- (e) requirement for an elector to cast all his votes at one time in Legislative Council ("LegCo") elections;
- (f) rationalization of counting procedures at main counting stations ("MCS");

- (g) clarification of an election agent's authority to act on behalf of candidate(s); and
- (h) improvement to the provisions about postponement or adjournment of an election, poll or count.

3. According to the Administration, the above proposals involve technical amendments to the LegCo Ordinance (Cap. 542), DC Ordinance (Cap. 547), Electoral Affairs Commission ("EAC") Ordinance (Cap. 541) and the subsidiary legislation made under the EAC Ordinance ("EAC Regulations"). Details of the proposals are set out in paragraphs 3 to 13 of the LegCo Brief (File Ref. CMAB C1/30/5/4).

4. Apart from the above proposals, the Administration has also proposed legislative amendments pertaining to the voter registration ("VR") statutory deadlines, and to make the existing offences on making false or incorrect statement knowingly or recklessly in VR indictable, as set out in paragraphs 16 to 20 of the LegCo Brief under reference. The proposals are to follow up the two outstanding suggestions in the Consultation Paper on Improvement Measures of Voter Registration System ("the Consultation Paper"), i.e. the proposed amendment to the VR statutory deadlines<sup>1</sup> and the proposed transfer of offence<sup>2</sup>.

5. In the light of public concerns regarding suspected false registered addresses of electors following the 2011 DC Election, the Registration and Electoral Office ("REO") has implemented a number of measures to improve the VR system. The Administration consulted the Panel on the improvement measures on 19 December 2011, and issued the Consultation Paper in January 2012 to consult the public. In light of the views received, the Administration decided that, amongst the proposed measures put forward in the Consultation Paper, the proposed amendment to the VR statutory deadlines and the proposed transfer of offence would need to be further considered.

6. After consideration, the Administration consulted the Panel on its proposals of extending the claims and objections period during a VR cycle and setting aside additional time for the Revising Officer to arrange hearings of claims and objections. As regards the proposal concerning the offences related to

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<sup>1</sup> There were proposals to advance the VR deadlines so that more time could be allowed for the public to inspect the Provisional Register ("PR") and the Omissions List ("OL") and make claims and objections.

<sup>2</sup> The concerned offences are set out in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (ECICO) and Cap. 541 and related subsidiary legislation. There were proposals as to whether the offences on false declaration should be put under one ordinance, and whether the penalty levels should be revised, etc.

VR, the Administration proposed making the offences on false declaration under Cap. 541A and 541B become indictable offences as well as lifting the six-month time bar for prosecution.

### **Major concerns raised by the Panel**

7. The Administration consulted the Panel on the above legislative proposals at its meetings on 15 April, 21 October and 18 November 2013. Members expressed concerns mainly on the proposals referred to in paragraphs 2(b), (e), (f), (h) and 4. The concerns raised by members are set out in ensuing paragraphs.

#### *Inclusion of electors who have voluntarily requested voter de-registration in OL*

8. Some members expressed concern about the legality of the present arrangement for REO to remove the names of electors requesting voluntary de-registration from PR without first including such names in OL. They also expressed concern about the measures taken by REO to verify requests for voluntary de-registration in order to prevent forgery.

9. The Administration explained that upon receipt of such a request, REO would issue a notification letter to the elector concerned after verifying his/her personal particulars contained in REO's database. The elector concerned who received the notification letter, if in doubt, could approach REO for follow-up action. Any suspicious case would be referred to the law enforcement agencies. Apart from issuing the notification letter, REO would try to contact the elector concerned by email (if available) before publication of OL. Moreover, when REO was empowered to include electors requesting voluntary de-registration in OL as currently proposed, the transparency of the relevant procedures would be enhanced. Also, REO was exploring the feasibility to launch an online system which would facilitate the electors to check their VR status and particulars via the Internet.

#### *Requirement for an elector to cast all his votes at one time in LegCo elections*

10. Some members enquired about the measures to check whether an elector who was entitled to cast two or more votes and was issued with all the ballot papers had cast all his/her votes in one go, and whether the vote cast was valid if the elector concerned was found to have not cast all his/her vote(s). The Administration advised that while the polling staff would monitor the casting of votes to ensure that the ballot papers issued to the elector were put into the appropriate ballot boxes, it was the personal choice of an elector as to whether he/she wished to cast all his/her votes in an election. Ballot papers issued to electors but not cast by the electors and left behind at the polling station would be treated as invalid.

*Rationalization of counting procedures at MCS<sup>3</sup>*

11. Members in general had no strong views on the above proposal. The Administration advised that the proposal did not introduce any changes to the existing counting arrangements, but only sought to remove ambiguities in the relevant provisions and better align with the counting process whereby PRO, when counting the votes at MCS, was only required to set aside one of the ballot boxes for mixing with the ballot papers received from SPSs/DPSs. This arrangement was introduced in 2012 to enable PRO of MCS to start the vote counting process as early as practicable without waiting for the arrival of all the ballot boxes from SPSs and DPSs. Before the mixing of the ballot papers at MCS as explained above, the number of ballot papers received from SPSs/DPSs would first be counted and verified, and the same would be done to the ballot papers cast in the ballot boxes of MCS polling station at the end of the counting process. Hon WONG Yuk-man suggested that the Administration should review the effectiveness of this arrangement as it might not be necessary if a sufficient number of polling stations could be set up in a DC election and a LegCo election.

*Improvement to the provisions about postponement or adjournment of an election, poll or count*

12. While members in general were supportive of the proposal, some members expressed a strong view that the postponed or adjourned election, poll or count should be held/resumed either on a Sunday or on a public holiday in order to facilitate voting by electors. They suggested that consideration might be given to specifying in the legislation that the postponed/adjourned election, vote or count would be held/resumed on the following or the next following Sunday.

13. The Administration explained that it was already an established practice to hold elections on Sundays for the convenience of electors, and REO would stick to this arrangement in holding/resuming the postponed/adjourned poll. In response to members' concern on the availability of polling stations on the rescheduled polling day, the Administration advised that as a contingency

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<sup>3</sup> To facilitate early declaration of election results, the poll-cum-count arrangement is presently adopted for the counting of votes in a DC election and a GC election of the LegCo. Under the poll-cum-count arrangement, except for a small polling station ("SPS") and a dedicated polling station ("DPS"), every polling station will be converted into a counting station after the close of poll for the counting of votes cast in that polling station. Moreover, to protect the secrecy of votes, ballot papers cast in a SPS or DPS will be delivered to a MCS polling station for mixing with the ballot papers of that polling station before counting of votes. In 2012, legislative amendments were introduced such that the Presiding Officer ("PRO") of a MCS must mix the ballot papers received from SPSs and DPSs with the ballot papers in at least one of the ballot boxes at the MCS polling station when counting the votes at the MCS. This was intended to enable the PRO of a MCS to start the vote counting process as early as practicable without waiting for the arrival of all the ballot boxes from SPSs and DPSs.

arrangement, the venues for use as polling stations would be reserved for such use on both the polling day and the following Sunday. Concern was raised as to whether the arrangement could cater for the occurrence of serious incidents which rendered the postponed/adjourned election unable to be resumed on the following Sunday, and requested the Administration to follow up.

14. Some members asked about the time to be appointed for the resumed poll on the rescheduled polling day, e.g. supposed that a poll was adjourned at 3 pm on the original polling day, whether the poll on the rescheduled polling day would be resumed at 3 pm. These members pointed out that some people had to work long hours on Sundays and would not be able to vote, if an adjourned poll was resumed only in the morning and closed before afternoon. They suggested that an adjourned poll should be resumed at the same hour when the poll was adjourned on the original polling day.

15. The Administration advised that it was not necessarily the case and it would depend on the actual circumstances. For example, if the adjournment was declared due to inclement weather, the time at which the poll was to be resumed would be set taking into consideration the weather condition and whether the polling stations were accessible or still being seriously affected by the inclement weather. EAC was vested with the authority to decide on the appropriate electoral arrangements to be made having regard to practical circumstances, e.g. the safety of electors under inclement weather and the availability of transportation means.

16. The Administration also advised that as specified in Schedule 2 to EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D), in the case of an adjourned poll, the polling hours to be appointed for the resumed poll must be such that the aggregate polling hours, when combined with the polling hours spent in the adjourned poll, was not less than the total polling time originally designated for the poll. Also, according to the law, only electors who had not cast their votes could vote in the resumed poll, while those who had cast their votes on the original polling day needed not do so again. The Administration also advised that the election expense limit would not be changed even if an election was postponed. Candidates would be able to conduct electioneering activities subject to the ceiling of the election expenses.

#### *Proposals on VR statutory deadlines*

17. Members in general did not raise objection to the proposals. Concern was, however, raised as to whether the proposal might deprive some people's right to cast their votes in the upcoming election if they discovered the change of the deadline late and were unable to register in time. The Administration advised that it had considered the concerns but had come to a view that there was a merit

in adopting the proposal of advancing the VR application deadline in order to allow more time for the electors to check their registration status.

*Making the existing offences on making false or incorrect statement knowingly or recklessly in VR indictable*

18. When the Panel discussed the above proposal at its meeting on 21 October 2013, some members considered that the Administration should also consider raising the penalty level for offences relating to VR false declarations in order to enhance the deterrent effect.

19. The Administration explained that the above proposal would lift the six-month time bar for prosecution, allowing prosecution to be initiated irrespective of the time at which the matter arose. This would enhance enforcement effectiveness and the deterrent effect. In fact, EAC had reviewed the existing penalty level of the offences made under the EAC Regulations, and considered that the existing penalty level was broadly appropriate. Regarding the penalty for offences relating to VR false declarations under Cap. 554, the Administration considered that the existing penalty level was sufficiently heavy to reflect the gravity of the offences.

20. Some members were of the view that given the long lead time normally required by the Independent Commission Against Corruption for conducting investigations, it might be possible that the accused would face prosecutions against him/her concurrently under Cap. 541A and Cap. 554 at the same time. It was suggested that consideration might be given to transferring the offences relating to false declaration in VR currently contained in Caps. 541A and 541B to Cap. 554 so that all offences related to VR would be enforced by one single law enforcement agency. The Administration advised that the proposal would have the effect of raising the penalty level under Cap. 541A and 541B. Besides, the Administration considered that the existing division of labour had been working well and would avoid the risk of overloading a single law enforcement agency.

### **Relevant documents**

21. A list of the relevant papers available on the LegCo website is in **Appendix**.

## Appendix

### Relevant papers on Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	15 April 2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21 October 2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	18 November 2013 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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