

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

**Follow up on issues raised at the
Bills Committee meeting on 14 May 2014**

This paper sets out the Administration's response to issues raised by Members at the Bills Committee meeting on 14 May 2014 regarding (i) extension of electoral deadlines in case of unforeseen occurrences other than inclement weather; and (ii) the manner of listing electors who have voluntarily requested voter de-registration for public inspection. For individual cases related to voter registration brought up by some Members at the meeting, we have contacted the office of the Members concerned and will follow up as appropriate after receiving the details of the cases.

Extension of electoral deadlines in case of unforeseen occurrences other than inclement weather

2. In voter registration ("VR") and election procedures, having a clear and transparent timetable is important for candidates, electors and different relevant parties. It ensures equal treatment of all and thus helps maintain the overall integrity and fairness of the electoral system. Therefore at present, the deadlines or periods for certain acts or proceedings to be done or taken in relation to VR or election procedures are stipulated clearly in the electoral legislation. When arrangements to extend these deadlines have to be made to cater for exceptional circumstances, it is important for the arrangements to be transparent, objective and predictable in order to minimise possible controversy, thereby maintaining public confidence and avoiding undermining the overall integrity and fairness of the election.

3. Among these VR and election procedures, one of the most critical components is the conduct of the election, poll or count, which concerns candidates, electors and the public at large. There is a paramount need to ensure that they are conducted in a smooth and fair manner. The existing electoral laws therefore already contain specific provisions concerning the postponement or adjournment of an election, poll or count. Specifically, under the existing electoral laws governing the Legislative Council, District Council and Rural Representative ("RR") elections, an election, poll or count (whether it is one covering the entire territory, individual constituency(ies) or just a polling/counting station) may be postponed or adjourned if it appears to the relevant

authority¹ that the election, poll or 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. The Bill also seeks to spell out more clearly in the law to cater for postponement or adjournment of an election, poll or count owing to an occurrence of public health danger of such severity as to obstruct, disrupt, undermine or seriously affect an election, poll or count.² Apart from the powers to postpone or adjourn, the Administration can also utilize reserve polling stations to cater for contingencies in case a polling station cannot be used due to unforeseen circumstances affecting certain regions or stations (e.g. flooding or landslides). We believe such provisions and arrangements have provided adequate flexibility to cater for situations when certain regional occurrences have seriously affected electors in visiting polling stations to cast their vote.

4. As for the VR procedures, the final registers of electors (“FRs”) are updated and published once a year, based on VR applications received since the previous year’s cut-off date. The electoral laws already provide an “appeal” mechanism whereby any aggrieved applicant whose VR application is not accepted in a particular VR cycle³ (such as a person failing to submit the VR application in time due to unforeseen circumstances) can lodge a claim for consideration by an independent Revising Officer (who is usually a magistrate appointed by the Chief Justice of the Court of Final Appeal). The Revising Officer will, in accordance with the law, arrange a hearing and determine each case on its merits based on the evidence and submissions by both the claimant and the Electoral Registration Officer (“ERO”). The successful claimants would be included in the relevant FR to be published later in the year.

5. Notwithstanding the above arrangements, we have reviewed the VR and election procedures to see if there is room for improving the arrangement in case certain unforeseen circumstances happen on a statutory deadline or the last day of a statutory period. We have made reference to section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) and sections 3 and 4 of the Judicial Proceedings (Adjournment during Gale Warnings) Ordinance (Cap. 62).

¹ This means the Chief Executive, the Electoral Affairs Commission, the Presiding Officer or the Returning Officer, as the case may be.

² Under the proposed amendment, the wording of ground (b) will be amended to read “riot or open violence or any danger to public health or safety”.

³ An VR application that is not accepted for processing in the current cycle due to late submission would be processed in the next cycle, unless the Revising Officer considers it appropriate to accept it in the current cycle after the hearing for the claim case.

6. Section 71 of Cap. 1 sets out the default arrangement for postponing certain deadlines or extending certain time periods to cater for situations when a gale warning⁴ or black rainstorm warning is in force throughout or for any part of the day of the deadline or period. Sections 3 and 4 of Cap. 62 provide that all judicial proceedings which are set down for hearing or are being conducted at a time which falls within the duration of a gale warning or a black rainstorm warning shall stand and remain adjourned until resumed on the next day, which is not a public holiday, after the warning ceases to have effect.

7. A gale warning or black rainstorm warning is issued where the weather conditions are such that the Hong Kong Observatory recommends the public to stay indoors and avoid staying in the streets. The weather conditions reflected by the gale warning and black rainstorm warning tend to impose a more direct and significant constraint on the activities of the general public across the whole of Hong Kong, when compared to those conditions reflected by other weather warnings. Having regard to the default arrangements laid down in Cap. 1 and Cap. 62, the current Bill seeks to introduce an objective deadline extension mechanism similar to that of Cap. 1 and Cap. 62 into relevant electoral legislations so that when a gale warning or black rainstorm warning is in force, the relevant parties would be compensated for the time lost for completing the relevant acts or proceedings.

8. Some Members have asked whether a deadline extension mechanism could also be introduced to cater for other unforeseen circumstances such as in case of a landslip warning, *force majeure*, etc. As explained above, the weather conditions reflected by weather warnings other than a gale warning or a black rainstorm warning (e.g. thunderstorm warning, landslip warning, special announcement of flooding in Northern New Territories) tend to have a less direct and significant constraint on the activities of the general public in Hong Kong. “Force majeure” (act of God) is a concept used in contract law to refer to unforeseen acts out of the control of either party and which renders the performance of an act impossible, or which entails serious consequences, at no fault of either contracting party. Given the imprecise, broad and potentially boundless scope of “force majeure”, introducing this concept into electoral legislation will give rise to considerable uncertainty and potential controversy in its application by the electoral authorities to specific cases, particularly in cases where some persons (e.g. candidates and electors) are able to meet a statutory deadline

⁴ A gale warning means tropical cyclone warning signals commonly referred to as No. 8, No. 9 and No. 10 issued by the Hong Kong Observatory.

while others who fail to meet the same deadline try to argue that a “force majeure” event has occurred. Meanwhile, as explained above, the existing electoral laws already have in place mechanisms to address cases of hardship caused by unforeseen circumstances other than a gale warning or black rainstorm warning.

9. It should also be noted that the existing electoral laws have provided, as far as possible, a reasonable period of time for individuals to complete different acts and proceedings. In addition, to facilitate the submission of documents by electors and candidates before the statutory deadlines, we encourage the public through publicity campaigns to complete the relevant acts or proceedings as early as possible. Except otherwise stated in the law, the electoral authorities (Registration and Electoral Office (“REO”) and Home Affairs Department) would also whenever possible accept documents submitted through means other than submission in person (including by post, by fax, by email, etc). In fact, based on past experience, the present arrangements have been operating smoothly and we have not received any request for assistance or complaint about encountering difficulty in meeting the statutory deadlines due to unforeseen circumstances.

10. Having regard to the considerations above, we consider it appropriate to introduce the deadline extension mechanism based on clear and objective gale and black rainstorm warnings in the current Bill.

Manner of listing electors who have voluntarily requested voter de-registration for public inspection

11. The purpose of preparing and making available an omissions list (“OL”) for public inspection along with the provisional register (“PR”) is to facilitate the public, especially the concerned electors themselves, to easily check the electors who were on the existing FR but will be omitted from the next FR. Under the existing statute, the types of persons to be entered on the OL include (i) electors for whom the ERO is satisfied on reasonable grounds that they have ceased to be eligible for registration (for example, electors who have passed away and electors who have changed their principal residential address but the new address is not known to the ERO), and (ii) electors who have, in the course of the statutory inquiry, voluntarily requested the ERO to remove them from the voter register. The OL serves as a one-stop collection of the above-mentioned electors, and the names of such electors are arranged so that Chinese entries come first in the order of the number of strokes of the Chinese characters of their respective surnames followed by English

entries in alphabetical order in line with the purpose of facilitating easy checking.

12. The Bill seeks to include in the OL also those electors who have voluntarily requested the ERO to remove them from the voter register other than in the course of a statutory inquiry. This enables the OL to show a complete picture of all electors who were on the existing FR but will be omitted from the next FR. To facilitate easy checking by electors and the public, and to keep the publication arrangements simple for electors and the public to understand, we consider it appropriate to keep the existing arrangement of listing out first the Chinese entries in the order of the number of strokes of the Chinese characters of their respective surnames and then English entries in alphabetical order in a single OL, instead of keeping separate lists of electors who will be omitted from the next FR for different reasons.

13. At the Bills Committee meeting held on 14 May 2014, a Member commented that the Chinese title of OL, i.e. 遭剔除者名單, does not seem to cover those who have voluntarily requested voter de-registration. We have further considered the comment. The Chinese title of OL refers to a list of existing electors who will be omitted from the next FR. As the FR / PR are registers maintained by the ERO, the act of omission / removal of the relevant entries is executed by the ERO rather than by the electors themselves. The term “遭剔除者名單” does not distinguish the reasons for which the electors will be omitted and can well cover those who have voluntarily requested voter de-registration. As explained in paragraph 11 above, under the existing provisions, the OL already covers those electors who have, in the course of a statutory inquiry, voluntarily requested the ERO to remove them from the voter register, and we have not received any complaint from the public that the existing Chinese title of the OL is inappropriate. Having said that, we are prepared to change the Chinese title of OL to “取消登記名單” to make the meaning even clearer. This will entail a change of the Chinese title of OL in all relevant electoral legislation.

Constitutional and Mainland Affairs Bureau
Registration and Electoral Office
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