

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

**Follow up on issues raised at the
Bills Committee meetings on 26 May, 31 May and 3 June 2014**

This paper sets out the Administration's response to issues raised by Members and the deputations at the Bills Committee ("BC") meetings held on 26 May, 31 May and 3 June 2014.

Mechanism to rectify administrative error in voter registration process

2. At the BC meeting on 26 May 2014, some Members enquired about the possibility of introducing a mechanism to reinstate the elector status as soon as it is discovered that an elector was omitted from the final register ("FR") solely due to an administrative error on the part of the electoral authority (e.g., erroneous input of address such that the elector is unable to receive enquiry/statutory inquiry letter from the Registration and Electoral Office ("REO")) without waiting for the next voter registration ("VR") cycle. The ensuing paragraphs set out the design of VR system, how administrative errors in the VR process can be rectified and the Administration's response to Members' suggestion.

(I) Design of VR system

3. VR in Hong Kong is voluntary. A person fulfilling the eligibility criteria set out in sections 27 to 31 of the Legislative Council Ordinance (Cap. 542) may apply for registration as an elector for the geographical constituency according to his/her residential address. To maintain the accuracy and integrity of the voter registers, the existing VR system consists of the following safeguards, namely –

- (a) Applicant's declaration: when a person applies for VR and change of particulars, he/she has to declare in the application form that the particulars he/she provided are true and accurate;
- (b) Transparent public inspection: the FR is updated and published once a year, based on VR applications received since the previous year's cut-off date. The key dates of a VR cycle are expressly set out in the electoral laws. Every year the REO makes available the provisional register ("PR") and the omissions list ("OL") for public inspection by the statutory

deadlines before the FR is published. An elector may also ascertain his/her registration status through REO's telephone hotline¹;

- (c) Mechanism for making claims and objections: the public may lodge claims and objections against the entries in the PR or the OL during a two-week inspection period². Registered electors may also request alterations to their registered particulars by the same deadline. Cases of claims and objections are referred to an independent Revising Officer ("RO") (who is usually a magistrate appointed by the Chief Justice of the Court of Final Appeal). For successful claims and objections, the REO will correct the relevant entries when preparing the FR with the approval of the RO and inform the persons concerned of the correction. Similarly, if the REO notices any errors, it would also seek the RO's approval to correct the relevant entries in preparing the FR; and
- (d) Checking by the REO: in addition to public inspection, the REO has put in place suitable checking measures (including cross-checking by a second staff member and additional checks by supervisors, etc) in the daily processing of applications to ensure the accuracy of the electoral registers, especially the residential addresses provided by the electors. Besides, enhanced checking measures implemented by the REO, such as cross-matching of the particulars of electors with concerned government departments and random sample checks, etc, also help ensure data accuracy.

4. The Administration attaches great importance to the integrity, fairness and openness of elections. The existing FR for the geographical constituencies (issued in July 2013) contains a total of 3 471 423 electors. From 2011 to 2013, the REO has processed over 510 000 new VR applications and 730 000 applications for change of particulars, and issued 380 000 statutory inquiry letters. Different levels of staff in REO

¹ To facilitate the public to check their registration particulars, the REO will launch an Online Voter Information Enquiry System in September 2014. This will facilitate electors to check their latest registration particulars round the clock and, if required, take timely action to update their particulars by submitting relevant applications.

² To allow more time for the public to check their VR status and to request changes to their registered particulars, one of the objectives of the current Bill is to adjust the relevant statutory deadlines so as to extend the two-week inspection period by 10 more calendar days.

are involved in maintaining the electoral registers and processing relevant applications. While we cannot completely rule out the possibility of human errors during the VR process, we consider that the measures being taken are effective in maintaining a high degree of transparency, fairness and accuracy in the VR system.

(II) Rectification of administrative errors after publication of the FR

5. Upon receipt of enquiries concerning loss of elector status, REO would examine the cases and try to assist the persons concerned to update their registration particulars or reinstate their VR in accordance with the statutory procedures. As explained in paragraph 3 above, a person may make a claim to reinstate his/her registration within a statutory period (presently from 15 to 29 June in a non-District Council (“DC”) election year and from 15 to 29 August in a DC election year). The RO will arrange a hearing in accordance with the electoral legislation to determine whether the claim should be allowed. These hearings would be held on or before 11 July in a non-DC election year and 11 September in a DC election year. Under the existing statutory procedure, any error identified in the PR, including an error which is due to a mistake made by the REO in the course of processing, has to be rectified through the same mechanism and corrected in the FR with the approval of the RO by the same deadlines.

6. We understand Members’ concern over the risk of an elector losing his/her right to vote due merely to faults of REO staff. In this regard, we consider that the existing arrangements have provided reasonable time and room for detection and rectification of such errors. The design of the VR system has carefully struck a proper balance between the need to maintain a clear annual VR cycle to achieve certainty in the electorate for various elections to maintain the integrity of the elections, and the need to provide a clear avenue for electors to make corrections irrespective of the reasons for such mistakes, supported by proper checks and balances to ensure a due process for the exercise of the statutory power to include or omit an elector from the electoral registers. If the VR system is to be changed to allow the FR to be amended at any time after publication, it would bring about much uncertainty to the entire VR system, which may compromise the integrity, certainty and transparency of the existing VR system and risk undermining public confidence in the electoral system. That said, the REO will review its operational procedures from time to time with a view to ensuring a high level of data accuracy and reducing the chances of human error as far as practicable.

Removal of the requirement for prior notice of appointment of polling and counting agents

7. The requirement for notice of appointment of polling and counting agents was further discussed at the BC meeting on 31 May 2014. As explained in the follow-up paper on issues raised at the BC meeting on 26 May 2014 and at the BC meeting on 31 May 2014 and 3 June 2014, the Administration appreciates Members' emphasis that prudence should be observed in electoral arrangements, and we are prepared to maintain the status quo regarding the notices of appointment and revocation of appointment of polling and counting agents. Committee Stage Amendments would be introduced accordingly.

Statistics of VR offence complaints which could not be followed up due to the 6-month time bar

8. Under section 22(1) and (2) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A) and section 42(1) and (2) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541 sub. leg. B), it is an offence for a person to make any statement which the person knows to be false in a material particular or recklessly make any statement which is incorrect in a material particular or knowingly omit any material particular from such an application in VR and it is also an offence for a person to cause another person to make such a false statement or to provide information which the first-mentioned person knows to be wrong in a material particular in VR. At present, as the above-mentioned offences are not indictable offences and no time limit is provided for in these regulations, the time bar imposed by section 26 of the Magistrates Ordinance (Cap. 227) is applicable to these offences. Therefore, prosecution in relation to these offences needs to be made within six months after the cases concerned arose.

9. A Member at the BC meeting on 3 June 2014 requested the Administration to provide statistics from recent years in respect of complaints received regarding the VR offences described in paragraph 8 which could not be followed up by the law enforcement agency due to the six-month prosecution time bar. As regards the VR complaints received following the 2011 DC Election, we note that 2 382 electors had made their applications for VR more than six months before the complaints. Upon referral by the law enforcement agency, REO followed up on all

these cases by approaching the electors concerned to ascertain and update their latest registration particulars as required.

10. The current legislative amendment seeks to make the existing offences on making false or incorrect statement knowingly or recklessly in VR indictable offences. This will lift the six-month time bar and allow prosecution to be initiated even when the false statement was made more than six months ago. This will facilitate investigation by the law enforcement agencies and strengthen the deterrent effect.

Authority of the Electoral Affairs Commission as regards demarcation of DC constituency boundaries

11. A Member enquired at the BC meeting on 3 June 2014 about the legal basis for the Electoral Affairs Commission (“EAC”) to determine the boundaries of DC constituencies under the existing statute. Such legal basis is stipulated in section 4(a) and Part 5 of the Electoral Affairs Commission Ordinance (Cap. 541), which sets out that the functions of the EAC include considering or reviewing the boundaries of geographical constituencies or DC constituencies, as the case may be, for the purpose of making recommendations to the Chief Executive. After receiving the EAC’s report containing the recommendations, the Chief Executive in Council will consider it as soon as practicable. There is therefore no question of the EAC lacking legal basis in the demarcation of DC constituencies.

Views of the deputations

12. Further to the discussions with Members and the attending deputations at the BC meeting on 31 May 2014, we would like to provide response at **Annex** to the specific views on the Bill raised in the written submissions which were not addressed during the meeting or covered in the Administration’s follow-up papers.

13. We also take note of the views expressed by the deputations and in the submissions on electoral policies and practical arrangements of elections and will take them into consideration in future as appropriate.

Constitutional and Mainland Affairs Bureau
Registration and Electoral Office
June 2014

Annex

The Administration's response to views of the deputations

Written submission from Dr Hans Mahncke

Firstly, we refer to the written submission from Dr Hans Mahncke (LC Paper No. CB(2)1636/13-14(01)). Regarding Dr Mahncke's observations on the Chief Executive Election Ordinance (Cap. 569), we would like to clarify that the proposed section 1A of the Schedule to Cap. 569 aims to provide for the extension of deadlines in cases of inclement weather in respect of section 14 of the Schedule (i.e. deadlines applicable to the Electoral Registration Officer ("ERO") in compilation and publication of the Election Committee Subsector Registers) only. As "working day" has already been clearly defined for the proposed section 1A of the Schedule, the general definition of "working day" in section 2 of Cap. 569 will not affect the specific provision under section 1A of the Schedule. Conversely, as Dr Mahncke has rightly pointed out, the proposed definition of "working day" in section 1A of the Schedule to Cap. 569 (which excludes Saturdays) applies solely to that section, and would not affect the continual applicability of the existing definition of "working day" in section 2 to other sections of Cap. 569.

2. Similarly, regarding Dr Mahncke's observations on the Rural Representative Election Ordinance (Cap. 576), the proposed section 2A of Cap. 576 aims to provide for extension of deadlines in cases of inclement weather in respect of section 17(1)(a) and (b) (i.e. deadlines applicable to the ERO in compilation and publication of the registers of electors for a Rural Area) only. It is clearly stipulated that the proposed definition of "working day" in section 2A of Cap. 576 (which excludes Saturdays) applies solely to that section. Hence we do not see it necessary to include further amendments in the Bill.

Written submission from Dynamic Island

3. Secondly, we refer to the revised written submission from Dynamic Island (LC Paper No. CB(2)1687/13-14 (01)). We have already responded to the views expressed by the Dynamic Island at the meeting on 31 May 2014. We would like to provide further response to the following views in the submission that are related to the legislative amendments in the Bill.

Paragraph 5

4. Whilst expressing support for the proposed amendment to handle applications by existing geographical constituency (“GC”) electors for registration in the District Council (“DC”) (second) functional constituency (“FC”), the submission pointed out that such applications can be handled under the existing statute and further legislative amendments may not be necessary. As explained in the Legislative Council (“LegCo”) Brief of the Bill (File Ref: CMAB C1/30/5/4), when existing GC electors who currently are not registered in any FC approach the ERO for registration for the DC(second)FC, the ERO has to resort to the existing notification arrangements for FCs under section 14 of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541 sub. leg. B) to complete such registration. We therefore propose in the Bill the express provision of an avenue for existing GC electors to register in the DC (second) FC.

Paragraph 7

5. The submission suggested applying the proposed legislative amendment for an elector to cast all his/her ballot papers at one time in LegCo elections to the Election Committee Subsector elections and the Rural Representative elections.

6. As explained in the LegCo Brief of the Bill, the current legislative amendment exercise aims to improve electoral procedures for the LegCo, DC and Rural Representative elections. Provisions relating to the Election Committee Subsector elections would be handled in a later amendment exercise to introduce electoral arrangements for the 2017 Chief Executive election.

7. As for Rural Representative elections, if a person is an Indigenous Inhabitant of ‘Village A’ and also a resident of ‘Village B’, he/she is eligible to be registered as an elector for both Indigenous Inhabitant Representative election and Resident Representative election. As two different villages are involved, he/she will vote in two different polling stations. As such, the proposal to require an elector to cast all ballot papers at one time in the LegCo election does not apply.

Paragraph 10

8. The submission suggested changing the fallback period for conducting a postponed/adjourned election, poll or count from 14 days to 15 days, and applying the same arrangement across all elections.

9. While the fallback period should provide sufficient flexibility in conducting or resuming the election, poll or count, we believe it is equally important that the postponed/adjourned event should resume within a reasonable period of time without undue delay. We consider the proposed 14-day time window suitable for the postponement or adjournment mechanism.