



## **II. REPORT**

The date of First Reading of the Bill is 16 April 2014. Members may refer to the LegCo Brief (File Ref: CMAB C1/30/5/4) issued by Constitutional and Mainland Affairs Bureau on 9 April 2014 for further details.

### **Object of the Bill**

2. The Bill amends various pieces of electoral legislation to improve the elector and voter registration arrangements and the electoral procedures for the elections of the Chief Executive (CE), Legislative Council (LegCo), District Councils (DCs) and the Rural Representative (RR).

### **Provisions of the Bill**

3. The Bill consists of 15 Parts. Part 1 consists of the short title and commencement date of the Bill. The proposed amendments in Parts 2 to 15 are summarized below –

- (a) Part 2 proposes to extend a deadline or the last day of a period specified under 13 pieces of electoral legislation for the CE, LegCo, DCs and RR election, in case a gale warning or black rainstorm warning is issued on that day, to the next working day;
- (b) Part 3 proposes to include in the omissions list the name of an elector of a LegCo or RR election, who has requested the Electoral Registration Officer to remove his name from the register of electors. The effect of such inclusion is that the elector will not be eligible for voting at the relevant election unless the elector makes a claim to request reinstatement of his/her registration;
- (c) Part 4 proposes to amend the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) to enable a geographical constituency elector who is not registered in any functional constituency (FC) to apply for registration in the District Councils (Second) FC;
- (d) Part 5 proposes to remove the existing requirement to give prior notice of appointing a polling or counting agent by a candidate of a LegCo, DCs or RR election. Under Part 5, such appointment may be submitted at the relevant polling or counting station on the polling

day. However, prior notice for the appointment of a polling agent of a dedicated polling station (DPS), i.e. a polling station for persons in custody, is still required. Division 5 of Part 5 also proposes to amend the Electronic Transactions (Exclusion) Order (Cap. 553B) so that transmission of notices by electronic mail is legally permitted;

- (e) Part 6 proposes to add transmission by electronic mail as a means of delivery for certain notices and applications for a LegCo, DCs or RR election;
- (f) Part 7 proposes that if an elector in a LegCo election is entitled to cast two or more votes, all the ballot papers will be issued to the elector on one occasion, and the elector must cast the ballots in the same visit unless the elector is permitted not to do so;
- (g) At present, the ballot papers for a LegCo or DCs election cast in a small polling station (SPS) or a DPS will be delivered to a polling station designated as the main counting station for vote counting. Part 8 proposes to change the counting procedure to enable the Presiding Officer of the main counting station to start vote counting process as early as practicable without waiting for the arrival of all the ballot boxes from SPS or DPS;
- (h) Part 9 proposes to clarify the authority of an election agent in a LegCo or DCs election to do all things on behalf of a candidate or a list of candidate so that the election agent has no authority to sign an election return for a candidate;
- (i) At present, an election, a poll or a count for LegCo, DCs or RR may be postponed or adjourned if the election, the poll or the count is likely to be obstructed, disrupted, undermined or seriously affected by –
  - (i) a typhoon or other climatic condition of a serious nature;
  - (ii) riot, open violence or other occurrence of public danger; or
  - (iii) an occurrence which appears to be a material irregularity relating to the election, the poll or the counting of votes.

In case of (i) or (ii), the postponed/adjourned election, poll or count must be held not later than 14 days from the date on which it would have been held while that in case of (iii) must be held not later than two days. Part 10 proposes to unify the period under the three scenarios to 14 days. Part 10 also proposes to replace other

occurrence of "public danger" under (ii) above to "danger to public health or safety" to cater for an postponement or adjournment caused by a major outbreak of disease;

- (j) Part 11 proposes to amend the definition of "ordinary business hours" in relation to a LegCo, DCs and RR election to mean the hours between 9 a.m. and 5 p.m. on any Monday to Friday (other than a general holiday) and between 9 a.m. to 12 noon on Saturday (other than a general holiday) if a notice specifying a period of time and the place for submitting nomination forms for the relevant election, or a notice of by-election, is published in the Gazette;
- (k) Part 12 proposes to specify, in relation to a LegCo, DCs or RR election, that –
  - (i) the Chief Electoral Officer must publish a list of polling stations, counting stations and ballot paper sorting stations, and to indicate in the list any special polling station for electors with disabilities at least 10 days before the polling day; and
  - (ii) the Returning Officer must give notice of the time and place of counting of votes to each candidate at least 10 days before the polling day;
- (l) Part 13 proposes to amend the definition of "electoral law" under the Electoral Affairs Commission Ordinance (Cap. 541) to empower the Electoral Affairs Commission to make regulations for DCs elections under section 7 of the Ordinance. Part 13 also introduces technical amendments to three other pieces of electoral legislation;
- (m) Part 14 proposes to change the statutory deadlines of Elector or Voter Registration to six pieces of electoral legislation to allow the public more time to inspect the registers for electors or voters and to make claims or objections. The deadline for registration as an elector or a voter is proposed to be advanced from 16 May to 2 May in a non-DC election year and from 16 July to 2 July in a DC election year. Part 14 also proposes amendments consequential to the changes of the deadlines; and
- (n) Part 15 proposes to make the existing offences of making false or incorrect statement knowingly or recklessly by a person in elector or voter registration under four pieces of electoral legislation indictable offences. The effect is that the six-month time bar for prosecuting the offences would be removed.

## Commencement

4. The Bill (except Division 5 of Part 5), if passed, would come into operation on the day on which it is published in the Gazette. Division 5 of Part 5 would come into operation on 1 January 2015.

## **Public Consultation**

5. Apart from consulting the Panel on Constitutional Affairs (CA), there has been no separate public consultation.

## **Consultation with LegCo Panel**

6. The Clerk to the CA Panel has advised that the Panel discussed the legislative proposals at its meetings on 15 April, 21 October and 18 November 2013. Apart from commenting on some technical issues, some members expressed concern that the proposal of advancing the deadline for elector or voter registration might deprive some persons of their right to vote if they failed to discover the change of the deadline and were unable to register in time. The Administration explained that the proposal would allow more time for the electors to check their registration status and whether their registration particulars were up-to-date. As regards the proposal of removing the six-month time bar applicable to false declaration offences in elector or voter registration, some members suggested that the Administration should also consider raising the penalty level for such offences in order to enhance the deterrent effect.

## **Conclusion**

7. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill and will report further if necessary.

8. Members may wish to set up a Bills Committee to study the Bill in detail in view of the concerns raised at the meetings of the CA Panel.

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