

立法會 *Legislative Council*

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Panel on Constitutional Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 21 October 2013

Voter registration statutory deadlines and offences related to voter registration

Purpose

This paper provides background information on the proposed amendment to the voter registration ("VR") statutory deadlines and the proposed transfer of offence put forward by the Administration in the Consultation Paper on Improvement Measures of the VR System issued in January 2012. This paper also summarizes the major concerns expressed by the Panel on Constitutional Affairs ("the Panel") on the subject.

Background

Procedures for VR

2. The Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A) stipulates a statutory timeframe for receiving applications for registration as electors for Geographical Constituencies ("GCs"), publication of the provisional register, omissions list¹ and final register, and determination of claims and objections in an annual registration cycle.

3. The Electoral Registration Officer ("ERO") will process the application forms after they have been received. If the information provided is incomplete or incorrect, ERO will send a written enquiry to the applicant to seek further information or proof. If the applicant fails to provide the required information or ERO is not satisfied with the information provided, ERO may decide not to

¹ The omissions list will include persons who, to ERO's satisfaction, are dead, no longer eligible to be registered, have been disqualified and whose address recorded in the existing final register against a person's name is no longer the person's principal residential address.

consider the application further. An applicant who qualifies for registration will be allocated to the relevant GC and District Council ("DC") Constituency Area on the basis of his residential address.

4. Based on the current final register and the applications received on or before the VR deadline for the year, ERO is required to publish a provisional register and an omission list for public inspection. The public may lodge claims and objections regarding the entries in the provisional register or the omission list during a two-week inspection period. Cases of claims and objections will be referred to the Revising Officer for consideration. After settling all the claims and objections, ERO will publish a final register for the year. This final register remains valid until the publication of the next final register. Only electors recorded in the last published final register for a constituency are entitled to vote in an election for that constituency. The deadline for receiving VR applications and the publication of the final register are approximately two months apart in a VR cycle. The statutory timetables for the VR cycle in a DC election year and a non DC election year are in **Appendix I**. The numbers of claims/objections received and reviews made by the Revising Officer during the VR cycle for the compilation of the final register from 2006 to 2010 are in **Appendix II**².

Offence

5. Under section 22 of Cap. 541A, it is an offence for a person to make a false or incorrect statement knowingly for VR purposes. It is also an offence for a person to cause another person to make such false or incorrect statement. The maximum penalty is a fine of \$5,000 and imprisonment for six months.

6. Under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"),

- (a) it is an offence if a person –
 - (i) votes at the election knowing that the person is not entitled to do so; or
 - (ii) votes at the election after having knowingly or recklessly given to an electoral officer information that were materially false or misleading, or knowingly omitted to give material information to an electoral officer;

² The information was provided by the Administration to the former Bills Committee on Chief Executive (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010 in January 2011.

- (b) it is also an offence if a person invites or induces another person –
 - (i) to vote at the election knowing that the other person is not entitled to do so; or
 - (ii) to vote at the election knowing that the other person has given to an electoral officer information that was materially false or misleading, or has omitted to give material information to an electoral officer;

The maximum penalty for the above offences is a fine of \$500,000 and imprisonment for seven years.

Review of VR system conducted after the 2011 DC Election

7. After the 2011 DC Election, there were complaints and media reports on cases of suspected false addresses of electors. To address public concern and to maintain the integrity of the VR system, the Administration conducted a review in late 2011. Having considered Members' views, the Administration announced that it would implement a number of improvement measures starting from 1 January 2012 and would conduct public consultation on other proposed measures. The enhanced checking measures implemented by the Registration and Electoral Office ("REO") since January 2012 are set out in **Appendix III**.

8. On 16 January 2012, the Administration issued the Consultation Paper on Proposed Improvement Measures of the VR System ("the Consultation Paper") for public consultation which ended on 2 March 2012. In April 2012, the Consultation Report was published. In light of the views received, the Administration decided not to pursue some of the proposed measures contained in the Consultation Paper, e.g. the proposed penalty concerning update of address and the proposed requirement for poll cards. The Administration also decided that the proposed amendment to the VR statutory deadlines and the proposed transfer of offence should be further considered.

Members' views on the proposals contained in the Consultation Paper

9. During discussion on the proposed measures in the Consultation Paper at meetings of the Panel³, members expressed the following views -

³ At its meeting on 19 December 2011, the CA Panel discussed REO's proposed improvement measures to the VR system. After publication of the Consultation Paper, the Panel held a special meeting on 17 February 2012 to receive public views on the relevant proposals. The Administration reported the summary of the public views and its initial position at the Panel meeting on 19 March 2012.

(a) The proposed requirement for address proof and proposed penalty concerning update of address

10. Members in general expressed reservations about the proposal for introducing a requirement that address proof should be provided as standard supporting evidence at the same time when a person applied for registration as a GC elector or when a registered elector applied for change of his residential address ("the proposed requirement for address proof"), and the proposal of introducing penalty for registered electors who failed to report changes of addresses or who failed to report such changes before the statutory deadline and vote in an election afterwards ("the proposed penalty concerning update of address"). They considered that the proposed requirement for address proof might affect the desire of the public to apply for VR and to vote, and that some eligible voters who were not property owners of the addresses would have difficulty in producing address proofs. Members were concerned that the proposed penalty concerning update of address would also create panic among the public.

(b) The proposed requirement for producing the poll card before voting

11. Some members considered that electors should be required to produce poll cards before voting in order to prevent occurrence of vote-rigging cases. Some other members, however, considered that this requirement would cause undue inconvenience to electors who might forget to bring along their poll cards or have lost their polling cards.

(c) The proposed transfer of offence under Cap. 541A on false declaration to ECICO

12. The existing offences under section 22 of Cap. 541A on false declaration and the existing offences related to voting under ECICO are enforced by the Police and the Independent Commission Against Corruption respectively. Some members considered that the enforcement of offences by two law enforcement agencies separately was undesirable, and suggested that consideration should be given to transferring the offences under section 22 of Cap. 541A to ECICO in order to facilitate the relevant investigation work. The Administration explained that the proposal would have the effect of raising the penalty of the offences under Cap. 541A because offences under ECICO were subject to higher penalties.

(d) The proposed amendment to the statutory deadlines

13. Some members suggested that the period of public inspection of the provisional register should be extended to facilitate public inspection. The Administration advised that extension of the inspection period would require advancing the statutory deadlines for new registration and for reporting changes of addresses so as to allow sufficient time for ERO to complete the checking and verification processes, and for the public to inspect and to lodge claims and objections, before the publication of the final register. A proposed timetable as compared with the existing timetable proposed by the Administration in the Consultation Paper is in **Appendix IV**.

(e) The proposed amendment to the register format

14. Members in general expressed support for the proposal of setting out electors in accordance with principal residential addresses in the voter register subject to the advice of the Privacy Commissioner for Personal Data that the proposal was not inconsistent with the Personal Data (Privacy) Ordinance (Cap. 486).

15. The Administration's final position on the above proposals is set out in the Consultation Report. The relevant extract is in **Appendix V**.

Recent development

16. Hon Emily LAU wrote to the Administration on 5 July 2013 requesting implementation of the proposed amendment to the VR statutory deadlines put forward in the Consultation Paper. The Administration informed the Panel at its meeting on 15 July 2013 that it intended to consult the Panel early next legislative session on the proposed amendment to the statutory deadlines and the proposed transfer of offence, i.e. the remaining two recommendations in the Consultation Report.

Relevant motion/questions and papers

17. At the Council meeting of 21 December 2011, Hon KAM Nai-wai moved a motion on "Improving the VR system to rebuild people's confidence in the electoral system". The motion, as amended by Dr Hon Philip WONG, was passed by the Council.

18. A list of the relevant documents is in **Appendix VI** for Members' easy reference. Members may also refer to a background brief entitled "Review of

VR system and related matters" [LC Paper No. CB(2)1565/12-13(03)] for details of other major issues (e.g. removal of registered electors' names from the final register, streamlining procedures for VR, and time gap between the deadline for VR and the polling day) raised by relevant committees of Legislative Council ("LegCo") in respect of the VR system since the First LegCo.

Council Business Division 2
Legislative Council Secretariat
17 October 2013

Statutory Timetables for Voter Registration

Major Event	Statutory deadlines in a non-DC election year	Statutory deadlines in a DC election year
The statutory deadline for an applicant to apply to the ERO for registration in the PR.	16 May	16 July
<p>If the ERO requires an applicant to provide further particulars relating to the application, the statutory deadline for an applicant to provide such particulars.</p> <p>After finishing all the registration procedures, the ERO has to compile the registration particulars, and to arrange for printing, checking and binding of the PR and OL, for subsequent sorting and distribution to the District Offices for public inspection.</p>	25 May	25 July
The statutory deadline for the ERO to publish and make available the PR and OL for public inspection.	15 June	15 August
After inspecting the PR and OL, the statutory deadline for the public to make an objection to or make a claim on the registration in the PR, or to apply for updating the registration particulars in the FR.	29 June	29 August

Major Event	Statutory deadlines in a non-DC election year	Statutory deadlines in a DC election year
<p>The ERO must deliver to the Revising Officer (RO) a copy of each notice of objection or notice of claim received. The RO will fix a hearing for each notice of objection or notice of claim concerning VR, and may review the ruling. With the approval of the RO, the ERO will correct an entry, make an additional entry or remove an entry as may be appropriate when compiling the FR.</p> <p>Meanwhile, the ERO will determine the applications for updating registration particulars, and with the approval of the RO, correct an entry, make an additional entry or remove an entry as may be appropriate.</p>	15 June to 11 July	15 August to 11 September
<p>After updating the entries, the ERO has to compile the registration particulars, and to arrange for printing, checking and binding of the FR, for subsequent sorting and distribution to the District Offices for public inspection.</p>	11 to 25 July	11 to 25 September
<p>The statutory deadline for the ERO to publish and make available the FR for public inspection.</p>	25 July	25 September
<p>DC Election</p>	Not applicable	November
<p>LegCo Election</p>	September	Not applicable

Appendix II

The number of claims/objections received and reviews made by the Revising Officer during the voter registration ("VR") cycle¹ for the compilation of the final register from 2006 to 2010 is as follows :

VR Cycle	No. of Claims	No. of Objections	No. of Reviews
2006	0	0	0
2007	1	0	0
2008	0	0	0
2009	0	0	0
2010	0	0	0
Total	1	0	0

Note: The claim in 2007 concerned an applicant whose application for registration as a geographical constituency elector was not received by the Electoral Registration Officer by 16 July 2007, i.e. the VR deadline for that year, as required under section 4(1)(a) of Cap. 541A. The claim was dismissed in the end.

**Source : Administration's follow-up paper on "Matters Concerning Voter Registration" for the Bills Committee on Chief Executive (Amendment) Bill 2010 and Legislative Council (Amendment) Bill 2010 meeting on 25 January 2011
[LC Paper No. CB(2)936/10-11(03)]**

¹ The cut-off date is the date of publication of final register for that year.

Legislative Council Panel on Constitutional Affairs

Checking Measures to Improve the Voter Registration System

Purpose

This paper explains the various checking measures on the registered residential addresses of electors introduced by the Registration and Electoral Office (“REO”) in 2012 to enhance the accuracy of the information in the voter registers.

Checking Measures

2. According to the current legislation, any eligible Hong Kong permanent resident has to provide a true and accurate residential address if he wishes to apply to be registered as an elector. After the 2011 District Council (“DC”) Election, there were complaints and media reports on cases of suspected false addresses of electors. To address public concern and to maintain the integrity of the voter registration system, the Administration conducted a review on the current voter registration system in late 2011 and proposed a series of improvement measures. After considering the views of the Members of the Legislative Council and those from the community, the REO has implemented a series of measures since January 2012 to improve the voter registration system and to enhance the accuracy of the information in the voter registers. The checking measures implemented by the REO in this regard include:

- (a) Follow up on the undelivered poll cards of the DC Election and the Election Committee Subsector Elections in 2011: the REO has issued a letter by registered mail to the elector concerned for any undelivered poll cards received, requesting the elector to confirm whether the address on the current final register is his principal residential address and to provide an address proof. If that letter is also undelivered or if the elector fails to reply by the deadline on the inquiry letter, the registration particulars of that elector will be removed from the 2012 provisional register and be included in the omissions list;

- (b) Checks on multiple electors or multiple surnames of electors at one registered residential address: the REO will require the electors concerned to provide proof or information if the number of electors or the surnames of electors exceed a certain number to confirm their residential addresses;
- (c) Random sampling checks: the REO has conducted random sampling checks on all electors in Hong Kong and requested the selected electors to provide proof or information to confirm their residential addresses;
- (d) Follow up on the undelivered letters on the voter registration of District Council (second) functional constituency (“DC (second) FC”): the REO sent a letter relating to the voter registration arrangements for the newly established DC (second) FC to all 3.56 million registered electors in Hong Kong in late February 2012. The envelope was specially designed to facilitate the public to return wrongly addressed letters to the REO for follow up action. The REO has issued inquiry letters to all electors whose letters are undelivered and requested them to confirm whether they still reside at the registered addresses and provide address proof;
- (e) Checks on demolished units or vacant units pending demolition: the REO has received a list of recently demolished buildings or buildings vacated pending demolition from the departments concerned (such as the Buildings Department and the Rating and Valuation Department). The REO has identified electors who may not have updated their residential addresses and issued inquiry letters to them;
- (f) Full-scale data matching with the Housing Department and the Hong Kong Housing Society: after seeking the agreement of the Privacy Commissioner for Personal Data, the REO has conducted a full-scale data matching exercise with the Housing Department and the Housing Society in March and April 2012 to confirm the accuracy of registered addresses of electors residing in public housing estates contained in the voter registers;

- (g) Follow up on suspected false address cases arising from the 2011 DC Election: the REO has issued 6 470 inquiry letters to electors involving in suspected false addresses from complaints received and media reports. The REO has thus far referred cases involving 2 120 electors to the law enforcement agencies for investigation (1 537 electors were involved in cases referred to the Hong Kong Police Force, while 583 electors were involved in cases referred to the Independent Commission Against Corruption); and
- (h) Other categories: the REO by applying internal criteria has identified a number of addresses suspected to be incomplete or located in non-domestic buildings from the current final register and issued inquiry letters to the electors concerned.

Appendix IV

Tentative Proposed Amendments to the Statutory Deadlines for Voter Registration and the Relevant Provisions

Major Event	Statutory deadlines in a non-DC election year		Statutory deadlines in a DC election year		Relevant Provisions
	Existing	Proposed	Existing	Proposed	
The statutory deadline for an applicant to apply to the ERO for registration in the PR.	16 May	1 Feb	16 Jul	1 Apr	Section 4 of Cap. 541A and section 19 of Cap. 541B
If the ERO requires an applicant to provide further particulars relating to the application, the statutory deadline for an applicant to provide such particulars.	25 May	15 Feb	25 Jul	15 Apr	Section 5 of Cap. 541A and section 21 of Cap. 541B
The statutory deadline for the ERO to publish and make available the PR and OL for public inspection.	15 Jun	30 Apr	15 Aug	30 Jun	Section 32 of the LCO and section 14 of the Schedule to the CEEO
After inspecting the PR and OL, the statutory deadline for the public to make an objection to or make a claim on the registration in the PR, or to apply for updating the registration particulars in the FR.	29 Jun	15 Jun	29 Aug	15 Aug	Sections 10, 13, 14, 15 and 17 of Cap. 541A and sections 25, 29, 30, 31 and 33 of Cap. 541B
The statutory deadline for the RO to fix a hearing for and rule each notice of objection or notice of claim received.	11 Jul	11 Jul	11 Sept	11 Sept	Section 18 of Cap. 541A and section 34 of Cap. 541B
The statutory deadline for ERO to publish and make available the FR for public inspection.	25 Jul	25 Jul	25 Sept	25 Sept	Section 32 of the LCO and section 14 of the Schedule to the CEEO
Relevant election	September		November		Not applicable

Consultation Report on Improvement Measures of Voter Registration System

(Extract)

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Chapter Ten: Conclusion – the Administration’s final position on the proposals**The proposed requirement for address proof**

10.1 In light of the views received, the Administration will not pursue the proposal for the time being. The Administration has stepped up efforts in enhancing the accuracy of the register by increasing the extent of checks including using a more targeted approach, as well as random checks on those new applications.

The proposed penalty concerning update of address

10.2 In light of the views received, the Administration will not pursue the proposal.

The proposed amendment to the statutory deadlines

10.3 In light of the small number of submissions received which commented on this proposal, the Administration will need to consider the proposal further. In any case, any adjustments to the deadlines will require legislative amendments which can only be done by the next-term government.

The proposed amendment to the register format

10.4 In light of the concerns raised, the Administration has consulted the PCPD on the proposal. The PCPD is of the view that the proposal may be within the definition of “election-related purposes” as the proposal would only involve a new sorting sequence and would not involve disclosure of additional personal data of voters. Based on the above information, PCPD considers that the proposal is not inconsistent with Data Protection Principle 3 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486), which is about the use (including disclosure or transfer) of personal data. Considering that the proposal will facilitate electors to inspect the register to help identify irregularities, the Administration has proposed to introduce a Committee Stage Amendment in the Electoral Legislation (Miscellaneous Amendments) Bill 2012 to implement the proposal.

The proposed requirement for poll cards

10.5 In light of the views received, the Administration will not pursue the proposal.

The proposed transfer of offence

10.6 In light of the small number of submissions received which commented on this proposal, the Administration will need to consider the proposal further, taking into account the views of the REO, the Department of Justice and the relevant law enforcement agencies.

Other views on voter registration

10.7 The definitions of “ordinarily reside in Hong Kong” and “principal residential address” are outside the scope of the consultation paper. The Administration has explained that these are complicated issues which have to be handled carefully by the next-term government, especially as it involves the fundamental right to vote by Hong Kong permanent residents. Other factors, including the freedom of movement and travel by the Hong Kong permanent residents enjoyed and protected under the Basic Law, have to be taken into consideration as well.

**Constitutional and Mainland Affairs Bureau
April 2012**

Appendix VI

Relevant documents on voter registration statutory deadlines and offences related to voter registration

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	19 December 2011 (Item III)	Agenda Minutes
Legislative Council	21 December 2011	Official Record of Proceedings Pages 262 - 345 (Motion moved by Hon KAM Nai-wai)
CA Panel	17 February 2012 (Item I)	Agenda Minutes
	19 March 2012 (Item IV)	Agenda Minutes
Legislative Council	30 May 2012	Official Record of Proceedings Pages 93 - 96 (Written question raised by Hon WONG Kwok-kin)
	6 June 2012	Official Record of Proceedings Pages 23 - 35 (Oral question raised by Hon Ronny TONG)
		Official Record of Proceedings Pages 85 - 88 (Written question raised by Hon Alan LEONG)
CA Panel	16 October 2012 (Item III)	Agenda Minutes
Legislative Council	17 October 2012	Official Record of Proceedings Pages 110 - 115 (Written question raised by Hon Albert CHAN)
	31 October 2012	Official Record of Proceedings Pages 116 - 119 (Written question raised by Hon Albert CHAN)

Committee	Date of meeting	Paper
CA Panel	19 November 2012 (Item IV)	Agenda Minutes
	17 December 2012 (Item IV)	Agenda Minutes
	21 January 2013 (Item III)	Agenda Minutes
	18 March 2013 (Item IV)	Agenda Minutes
	15 July 2013 (Item II)	Agenda Minutes

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