

**Legislative Council
Panel on Constitutional Affairs**

Proposed Technical Amendments to Electoral Legislation

Introduction

This paper seeks Members' views on the Administration's proposed technical amendments to the Legislative Council Ordinance (Cap. 542), District Councils Ordinance (Cap. 547), Electoral Affairs Commission (EAC) Ordinance (Cap. 541) and the subsidiary legislation made under the EAC Ordinance (EAC Regulations). The proposals are related to the voter registration and electoral procedures for the Legislative Council (LegCo), District Council (DC) and Village Representative (VR) elections.

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 identified areas which require legislative amendments to Cap. 542, 547 and 541, and the EAC Regulations.

Proposed amendments

(1) Extension of electoral deadlines in case of inclement weather

3. At present, there are a number of legislative provisions under the EAC (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B), the EAC (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and the EAC (Electoral Procedure) (District Councils) Regulation (Cap. 541F) stipulating the deadlines or periods for certain acts or

proceedings¹ to be done or taken in relation to voter registration or electoral procedures. These acts and proceedings are important components to ensure fairness and smooth operation of the overall electoral system.

4. Save in the case of postponement or adjournment of an election, poll or count, the statutory provisions stipulating the deadlines or periods for the concerned acts or proceedings currently do not provide for contingency in case of issuance of gale warning² or black rainstorm warning. When such inclement weather falls on a statutory deadline or the last day of a statutory period (generally referred to as “statutory deadline” hereunder), it may affect the operation of the relevant procedures, and may result in hardship in individual cases. For example, if the statutory period for filing a notice of claim is shortened because of inclement weather occurring on the last day of the period, an elector included in the omissions list (OL) may not be able to lodge a claim in time for consideration by the Revising Officer and thereby lose his voting right in the coming election.

5. Therefore, we propose that the statutory deadlines should be extended to the following working day when a gale warning or black rainstorm warning is in force throughout or for any part of the ordinary business hours of the Registration and Electoral Office (REO) or the Returning Officer (RO)’s office on the day of the deadline, to compensate for the time “lost” for completing the relevant acts or proceedings. When such an extension becomes necessary, the REO will arrange appropriate media announcements to inform the public of the arrangements.

(2) Inclusion of electors requesting voluntary de-registration in the omissions list

6. Under Cap. 541A and 541B, the OL is published together with the provisional register (PR) not later than 15 June in a non-DC election year, or 15 August in a DC election year. Currently, the PR will not include the

¹ For example, the deadlines for voter registration; the deadline for a voter registration applicant to provide further particulars if so requested by the Electoral Registration Officer (ERO); the deadline for the ERO to initiate inquiry proceedings and publish the provisional register (PR), omissions list (OL) and final register for public inspection; the deadline for the public to make claims and objections in respect of entries in the PR and OL or to make updates on the registration particulars; the deadline for the Revising Officer to make a ruling for a claim or objection.

² For the purpose of the proposal, a gale warning would mean any of the tropical cyclone warning signals commonly referred to as No. 8, 9 and 10 issued by the Hong Kong Observatory.

particulars of (a) electors for whom the Electoral Registration Officer (ERO) is satisfied on reasonable grounds that they have ceased to be eligible for registration³, and (b) electors who have requested the ERO to remove them from the voter register. However, the current provision only empowers the ERO to include electors in category (a) but not (b) in the OL.

7. To ensure consistency in the compilation of the PR and OL, we propose that the entries in respect of electors requesting voluntary de-registration should also be included in the OL. If the elector subsequently changes his mind and wishes to be included in the final register (FR) before the FR is published, he may in accordance with the existing procedures lodge a notice of claim to request reinstatement of his registration after the publication of the OL. A de-registered elector may also apply for registration as an elector again any time in future.

(3) Application by existing Geographical Constituencies (GC) electors for registration in DC(second)Functional Constituency (FC)

8. When the DC(second)FC was established in 2012, Cap. 541B was amended to provide the following categories of registered electors to be included in the first register of the DC(second)FC: (a) persons who were then registered electors for the GCs but were not registered electors for any of the other 28 FCs unless the persons elected not to be so registered; and (b) persons who were then registered electors for the GCs and one of the other 28 FCs, but who elected to register for the DC(second)FC. A new subsection (1A) was also added under section 19 of Cap. 541B to the effect that a person applying for registration in a GC is also regarded as having applied for registration for the DC(second)FC unless indicated otherwise by the applicant.

9. The above legislative amendments were designed to facilitate the automatic registration in DC(second)FC of a large number of GC electors who at the time were not registered electors in any traditional FC, in order to facilitate the compilation of the first DC(second)FC register in 2012. However, it is now noted that these provisions have not provided an avenue for existing GC electors who currently are not registered in any FC, to apply for registration in the DC(second)FC. These electors tend to be those who have elected not to be registered for the DC(second)FC or who are existing FC electors of one of

³ 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.

the other 28 FCs but have applied for de-registration from that FC⁴. As such, it is necessary to amend the relevant provision in Cap. 541B to provide for applications by existing GC electors for registration in the DC(second)FC.

(4) Prior notice of appointment of polling and counting agents

10. Currently under the relevant sections in Cap. 541D and 541F, notices of appointment of polling and counting agents should be submitted to the Chief Electoral Officer (CEO) and the RO, as applicable, at least one week before the polling day. Alternatively, such notices may be delivered in person by the candidates or the election agents to the Presiding Officers (PROs) of the polling stations concerned on the polling day. For revocation of appointment of polling and counting agents, the candidates or the election agents must either give notice of the revocation to the CEO, the PROs or the ROs, as applicable, before the polling day, or serve the notice in person to the CEO, the PROs or the ROs of the polling/counting stations concerned on the polling day.

11. We have reviewed the existing arrangement and consider that the requirement for prior notification is operationally not necessary. We therefore propose to dispense with this requirement, except for polling agents to be appointed for dedicated polling stations (DPSs) because lead time is required for obtaining security clearance to arrange for polling agents' admission to the DPSs.

12. Under the proposed arrangement, we would only require a polling agent appointed by a candidate to submit a duly completed notice of appointment direct to the PRO onsite at the time when first seeking admission to a polling station on the polling day. For a counting agent, the notice of appointment will be submitted direct by the counting agent to the PRO/RO⁵ onsite when first seeking admission to a counting station. For revocation of appointment of polling/counting agents, the candidate concerned may serve a notice of revocation to the CEO any time on the polling day, who will act as the central coordination point to deliver the information to the PROs or ROs of the polling or counting stations concerned.

⁴ Currently, when these GC electors approach the REO for registration for the DC(second)FC, the REO has to resort to the existing notification arrangement for FCs under section 14 of Cap.541B to complete registration of the electors concerned for the DC(second)FC.

⁵ The PRO in the case of a poll-cum-count station and the RO in the case of a central counting station.

(5) An elector to cast all his votes at one time in LegCo elections

13. With the introduction of the DC(second)FC in 2012, most electors have two votes to cast in a LegCo general election, namely, one vote for the GC and the other vote for the traditional FC or DC(second)FC. For the 2012 LegCo election, to maintain good order in polling stations, electors were issued with all the ballot papers they are entitled to simultaneously, and all of them cast all their ballots during the same visit to the polling station. We consider that this arrangement is necessary for smooth electoral operation and should continue. To put beyond doubt that electors should cast all the ballots they have been issued, we propose to amend Cap. 541D to make clear that an elector who has been issued with two or more ballot papers must cast all his votes in one go in a LegCo election.

(6) Counting procedures at the main counting station

14. 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) (which is a polling station allocated to fewer than 200 and 500 electors in a DC election and a LegCo election respectively) and a DPS (which is to cater for the casting of votes by imprisoned/remanded/detained electors), 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 polling station designated as the main counting station (MCS) for mixing with the ballot papers of that polling station (the MCS polling station) before counting of votes.

15. In 2012, legislative amendments were introduced such that the PRO of a MCS must, when counting the votes at the MCS, 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. The purpose is to enable the PRO of the MCS polling station to start the vote counting process as early as practicable without waiting for the arrival of all the ballot boxes from SPSs and DPSs. The same arrangement is applicable to the ballot papers received from a ballot paper sorting station (BPSS), which is set up in a DC ordinary election and a LegCo general election for the sorting of ballot papers cast in DPSs.

16. A recent review of the relevant legislative provisions has, revealed that the provision detailing the counting steps in a MCS polling station currently requires verification of the ballot paper account in respect of the MCS polling station to take place before counting of votes. This requirement runs counter to the objective of enabling the counting of votes at the MCS explained above. Therefore, we propose to remove the possible ambiguities and better align with the counting process in respect of a MCS polling station as set out in paragraph 15 above.

(7) Postponement/adjournment of elections

17. At the meeting of this Panel on 15 April 2013, concern was raised as to whether the existing provisions in the DC and LegCo elections can cater for the postponement of an election and adjournment of poll/count caused by a major outbreak of disease. We have examined the relevant provisions in the electoral legislation. The existing provision provides for postponement of an election and adjournment of poll/count caused by “occurrence of public danger”, and this may arguably be construed to cover serious danger due to a public health incident. This notwithstanding, we see merit in spelling out more clearly in the law to cater for postponement of an election and adjournment of poll/count owing to an occurrence of public health danger. An occurrence of “public health danger” in this context refers to a danger of such severity as to obstruct, disrupt, undermine or seriously affect an election, poll or count.

(8) Signing the election return

18. As stipulated in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), each candidate at an election must lodge with the appropriate authority an election return (ER) setting out the candidate’s election expenses at the election and all election donations received by or on behalf of the candidate in connection with the election. Furthermore, the design of the existing specified form of the ER requires the candidate to sign the ER personally due to criminal implications for making a false declaration. On the other hand, as under Cap. 541D and 541F now stand, an election agent may do all things which a candidate or the candidates on a nomination list or a list of candidates may do in connection with an election unless an act is expressly excluded, and the signing of the ER by the election agent is not expressly excluded. To put the matter beyond doubt, we propose to amend Cap. 541D and 541F to the effect that an election agent may not sign the ER for or on behalf of a candidate, or a list of candidates.

(9) Advancement of voter registration deadlines

19. On 21 October 2013, this Panel discussed the proposal to extend the claims and objections period from two to four weeks for voter registration by advancing the deadline for voter registration application for two weeks, so as to allow more time for the public to check whether they are included in the PR or OL and whether their registration particulars are up-to-date. We have since further reviewed the work arrangements. We envisage that such a move may result in an increase in the number of claims and objections which need to be dealt with by the Revising Officer. As the existing time frame for the Revising Officer to consider claims and objections is already tight, in order to allow sufficient time for the Revising Officer to complete his review process, in advancing the voter registration deadline by 14 days, 10 days should be provided to the public to inspect the PR and OL, and 4 days should be provided to the Revising Officer to process the expected increase in claims and objections.

20. Except for proposals (3), (5) and (9), similar amendments will be made to the corresponding provisions governing a VR election in EAC (Registration of Electors) (Village Representative Election) Regulation (Cap. 541K) and Electoral Procedure (Village Representative Election) Regulation (Cap. 541L)⁶.

Way Forward

21. Members are invited to provide their views on the Administration's proposed legislative amendments outlined above. Subject to Members' comments, we shall include the legislative proposals in a miscellaneous electoral amendment bill to be introduced later in the 2013-14 legislative year –

- (a) paragraphs 3 to 18 above;
- (b) the proposed amendments in relation to extending the claims and objections period for voter registration as mentioned in paragraph 19 above;

⁶ Proposal (3) concerns registration of electors for the LegCo election only. For proposal (5), an elector may need to vote at different polling stations as an indigenous inhabitant and as a resident in a VR election. Concerning proposal (9), as the electorate of the VR election is much smaller in size, the existing claims and objections period for voter registration is considered sufficient.

- (c) the proposed amendments on making the offences on false declaration under Cap. 541A and 541B to become indictable offences as well as lifting the six-month time bar for prosecution as discussed by this Panel on 21 October 2013; and
- (d) the adjustment of fallback period for holding elections for the LegCo, DC and VR to 14 days as discussed by this Panel on 15 April 2013.

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