

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 18 May 2015

Guidelines issued by the Electoral Affairs Commission on Election-related Activities in respect of the District Council election

Purpose

This paper summarizes the past discussions held by the Panel on Constitutional Affairs ("the Panel") on the proposed Guidelines on Election-related Activities in respect of the District Council ("DC") election ("the proposed Guidelines") issued by the Electoral Affairs Commission ("EAC") in May 2011.

Background

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. According to section 6(1)(a) of the EAC Ordinance (Cap. 541), EAC may issue guidelines relating to the conduct or supervision of an election. EAC will update the guidelines before each election taking into account the operational experience and suggestions for improvements obtained from recent elections and by-elections.

3. According to the Administration, before the promulgation of each set of guidelines, a 30-day consultation period inviting representations from the public and other parties concerned on the draft revisions of the Guidelines will be conducted. The proposed Guidelines will then be revised taking into account the views received during the public consultation period before they are finalized for issue to the public.

Past discussions of the Panel

4. EAC consulted the public on the proposed Guidelines in respect of the 2011 DC election from 24 May to 22 June 2011. The Panel discussed the proposed Guidelines at its meeting on 20 June 2011. The major changes in the proposed Guidelines as compared with the last updated version (issued in January

2010) are set out in **Appendix I**. The finalized Guidelines were published by EAC in September 2011. The relevant issues raised by members at the meeting are summarized in the following paragraphs.

Broadcast of election-related programmes on the Internet

5. Some members expressed concern about the extension of the "equal time principle" to the broadcast of election-related programmes on the Internet as set out in the proposed Guidelines. They considered that this would impose restrictions on discussions or broadcasting activities on the Internet. Given the extensive use of online broadcast and the popularity of uploading videos on social networking or communication websites, members in general considered this new requirement not feasible. The Registration and Electoral Office ("REO") advised that EAC would listen to all the views on the proposed Guidelines and would consider making amendments as appropriate.

6. EAC had subsequently received strong public views during the consultation period opposing the proposed extension of the "equal time principle" to cover Internet TV and radio. After considering the views collected, EAC took the view that it was not appropriate to take forward the proposal. EAC considered that Internet was an open platform. Everyone could broadcast programmes on the Internet and no one could monopolise its use. EAC decided that, given the existing regulations on election advertisements and election expenditure, such Internet programmes could be excluded from the scope of application of the said principle. EAC considered that this decision would not adversely affect the overall fairness of elections.

Exit Poll

7. Some members expressed dissatisfaction that EAC had failed to respond to the long-standing call of Members for regulating the conduct of exit polls. They asked whether EAC would revise the proposed Guidelines to the effect that organizations were not allowed to use the exit poll results to plan the electioneering activities of candidates before the close of poll. The Administration advised that any organization intending to conduct exit polls would need to sign an undertaking to abide by its terms and guidelines governing the conduct of exit polls, including not to release the exit poll results before the close of poll.

8. Some members queried why EAC did not stipulate clearly in the proposed Guidelines that organizations should not use exit poll results to assist candidates/political parties in planning their electioneering activities. The Administration advised that EAC had appealed to the organizations concerned in the Guidelines issued in January 2010 to refrain from announcing the results of

exit polls until after the close of poll. The media and academic institutions had followed the relevant guidelines in the past elections. REO considered the existing arrangement appropriate.

Electioneering activities

9. In response to members' enquiries, the Administration advised that in the event that a website was hosted by a candidate and he/she continued to publicize his or her political views on that website during the election period, the expenses incurred should be counted as the election expenses of the candidate. To avoid unfair extra publicity for the candidate at the critical time, the Guidelines issued in January 2010 required a presenter or a regular contributor not to appear in any programme in his normal programme role after he had publicly declared his intention to stand for the election or during the election period once he became a candidate.

10. Some members opined that civil servants should not participate in electioneering activities. They asked whether more stringent guidelines on participation in election-related activities by civil servants and officials under the Political Appointment System would be drawn up. They considered that the Administration should take measures to ensure that the participation of politically appointed officials in any election-related activities would not constitute any conflict of interest of them.

11. The Administration advised that electoral guidelines had been revised in the light of the implementation of the Political Appointment System. These guidelines would be updated before each election taking into account the operational experience and suggestions for improvements received. In the past DC, Legislative Council ("LegCo") and the Chief Executive elections, candidates concerned had followed the relevant electoral law/guidelines and had not used public resources for election campaigns. Furthermore, all candidates were required under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to declare all expenses, including those incurred in connection with the preparatory work of an election, in the election return to be submitted to REO.

12. Some members enquired whether there were clear guidelines, other than the electoral guidelines, for civil servants on their participation in electioneering activities in an election. The Administration advised that civil servants who wished to participate in such activities should observe the guidelines, regulations and rules issued by the Civil Service Bureau ("CSB"). Under the CSB guidelines currently in force, certain officers at a senior level and those who might be particularly susceptible to accusations of bias because of the nature of their duties, namely directorate officers, Administrative Officers, Police Officers and Information Officers, should not openly support any candidate or be seen to

lend support to a candidate. They should not participate in any form of electioneering. Apart from these officers, there was no objection in principle to individual civil servants supporting electioneering activities of a candidate provided that it would not give rise to any conflict of interest with their official duties, and that it would not involve the use of public resources.

Recent development

13. The Administration will brief the Panel on the proposed Guidelines in respect of the 2015 DC election at the next meeting on 18 May 2015.

Relevant papers

14. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix II**.

**Major Changes in the Proposed Guidelines
for District Council Election
as Compared with the Guidelines Issued in January 2010**

Relevant Chapter	Major changes
<p>Chapter 3 <i>Nomination of candidates</i></p>	<ul style="list-style-type: none"> ● adding that the “Introduction to Candidates”, if considered to contain information not relating to the direct promotion of the candidature of the candidate concerned, will be subject to alteration or edition (para. 3.58); and ● reminding candidates that electors, who are only able to read English, are equally entitled to be informed of the candidates’ election platforms (para. 3.58).
<p>Chapter 4 <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> ● adding that the use of sound amplifying device within the no canvassing zone for the performance of duties by officers of the Correctional Services Department at dedicated polling stations (DPSs) in prisons is allowed subject to the enactment of the proposed amendment to section 43 (13) of the Electoral Affairs Commission (Electoral Provision) (District Councils) Regulation (EAC (EP) (DC) Regulation) (para. 4.12(b)); and ● setting out the revised sorting process in the ballot paper sorting stations subject to the enactment of the proposed amendment to section 75A of the EAC (EP) (DC) Regulation (para. 4.45).
<p>Chapter 5 <i>Election Petitions</i></p>	<ul style="list-style-type: none"> ● Part II of the Chapter will be suitably amended subject to the enactment of the proposed amendment to the District Councils Ordinance to put in place an appeal mechanism for election petitions (Part II of the Chapter).
<p>Chapter 6 <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<ul style="list-style-type: none"> ● setting out that civil servants, who work in a constituency or have extensive contacts with the public in a constituency, are strongly advised not to accept appointment by a candidate in the constituency to be his agent and/or participate in electioneering activities to avoid any unfairness, semblance of unfairness or conflict of interest (para. 6.5).

Relevant Chapter	Major changes
<p>Chapter 7 and Appendix B <i>Election Advertisements</i></p>	<ul style="list-style-type: none"> ● setting out the revised election expenses limit of \$53,800 subject to the enactment of the proposed amendment to the Maximum Amount of Election Expenses (District Council Election) Regulation (para. 7.10); ● lifting the restriction on display of joint election advertisements in the common parts of private premises in order to align with the existing arrangement for the display of joint election advertisements (EAs) allowed at designated spots (para. 7.29); ● setting out the advice of the Independent Commission Against Corruption that apart from the cost of refurbishing old publicity boards (which will be re-used for an election), their estimated value will also be counted towards the concerned candidate's election expenses (para. 7.32); ● specifying the deadline for the removal of EAs in relation to an uncontested election (para. 7.40); ● setting out the arrangements for submitting by electronic means the declaration and copy of EA to be displayed, distributed or otherwise used by electronic means, subject to the enactment of the proposed amendments to sections 103 (4A), (5A), (6) and (7) of the EAC (EP) (DC) Regulation (paras. 7.45 to 7.47 and Appendix B); ● clarifying that before the display of an EA in the form of a bill or poster, the candidate must deposit with the Returning Officer a copy of the permission or other authorisation obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance subject to the enactment of the proposed amendments to section 103(9) of the EAC (EP) (DC) Regulation (para 7.45(b)); and ● reminding candidates that they should carefully study the requirements governing free postage for election advertisements and that they should submit their EA specimens to the respective Manager of the post office for approval as early as possible before mass production so as to allow sufficient time for revising the contents of their EA specimens, if necessary (paras. 7.79 to 7.80).

Relevant Chapter	Major changes
<p>Chapter 8 <i>Electioneering at the living or working places of electors, premises of organisations to which electors belong and buildings which electors frequent</i></p>	<ul style="list-style-type: none"> ● reminding candidates and their election agents to read carefully the guidance notes on personal data privacy in respect of electioneering activities (prepared by the Office of the Privacy Commissioner for Personal Data at Appendix F to the Guidelines) before they undertake such activities (para. 8.18).
<p>Chapter 10 and Appendix I <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> ● covers aspects relating to TV and radio broadcast on the Internet (paras. 10.3 and 10.9 to 10.12); ● drawing broadcasters’ attention to the observations made by the Court in an election petition as set out in Appendix I, and advising them, where appropriate, to follow the arrangement therein to give a clear message to audience on the total number and the names of all candidates in the same constituency and to give equal treatment to all candidates concerned when producing multi-episode programmes which are election-related (para. 10.5 and Appendix I); ● reminding candidates and the media of the need to avoid unfair extra publicity for candidates (paras. 10.10, 10.12 and 10.15); ● adding that the guidelines as set out in Part III also apply to the online editions of the print media (para.10.17); and ● reminding candidates that if the EAC receives a complaint about a candidate taking unfair extra publicity and it is subsequently found that the candidate has failed to make his best endeavours in accordance with the guidelines to avoid taking the aforesaid extra publicity, the EAC may make a reprimand or censure in a public statement against him (para. 10.22).
<p>Chapter 11 <i>Use of sound amplifying device and vehicles</i></p>	<ul style="list-style-type: none"> ● setting out the Transport Department’s updated requirements for the display of EAs on public light buses and taxis (para. 11.7).

Relevant Chapter	Major changes
Chapter 15 <i>Election expenses and donations</i>	<ul style="list-style-type: none">● reminding candidates that they should give the unspent or unused election donations to charitable institutions or trusts before lodging the return and declaration of election expenses and donation in accordance with section 37 of the ECICO (para. 15.17); and● revising the subsidy rate of financial assistance for the eligible candidate (who get elected or who have received 5% of valid votes or more) to the lowest of \$12 per vote times the number of valid votes received by the candidate; 50% of the election expenses limit; or the amount of the declared election expenses of the candidate, subject to the enactment of the proposed amendment to Schedule 7 of the District Councils Ordinance (para. 15.32).
Chapter 16 <i>Corrupt and illegal conduct</i>	<ul style="list-style-type: none">● reminding candidates and other persons that any person, who wishes to publish a statement about a candidate or candidates, should make every effort to ensure its accuracy before its publication (para. 16.8).
Chapter 17 <i>Namedropping</i>	<ul style="list-style-type: none">● reminding candidates to observe the relevant data protection principle as set out in the guidance notes at Appendix F before using an image of an identified person for the purpose other than the original purpose of collection (para. 17.12).

**Relevant documents on guidelines issued by the
Electoral Affairs Commission on election-related activities
in respect of the District Council election**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	19.4.1999 (Item II)	Agenda Minutes
	15.12.2003 (Item V)	Agenda Minutes
	15.3.2004 (Item VII)	Agenda Minutes
	21.6.2007 (Item IV)	Agenda Minutes
	20.6.2011 (Item IV)	Agenda Minutes

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