

# 立法會 *Legislative Council*

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## **Bills Committee on Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper gives a brief account of the concerns raised by the Panel on Constitutional Affairs ("the Panel") during its discussions on the legislative proposals contained in the Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 ("the Bill").

#### **Background**

2. According to the Administration, the Bill is aimed at making technical amendments to several pieces of electoral legislation so as to prepare for the public elections to be held in 2016 and 2017. The Bill introduces technical amendments such as extending certain electoral deadlines in case of inclement weather and clarifying delivery methods of certain electoral documents. Such arrangements are already in place for public elections such as the Legislative Council ("LegCo") election and the District Council ("DC") election. The Bill amends legislation related to the Election Committee subsector ("ECSS") elections and the Chief Executive ("CE") election, so as to align the electoral arrangements of these two elections with other public elections. The Bill also includes necessary technical amendments to the electorate of ECSSs.

3. Besides, the Bill proposes to align to one later deadline for filing of election returns ("ERs") for candidates of the same election (including contested and uncontested candidates), so as to facilitate candidates in preparing their ERs.

#### Aligning the deadlines for filing ERs

4. When the Panel discussed "Conduct in contravention of the Elections (Corrupt and Illegal Conduct) Ordinance ("ECICO") (Cap. 554)" at its meeting on 23 April 2014, some members expressed concern that in LegCo elections, uncontested candidates who had conducted joint promotion with contested candidates might face difficulties in verifying and apportioning the relevant election expenses with the latter who were still busily contesting in the election.

As a result, the uncontested candidates might be unable to set out the relevant election expenses in their ERs by the specified timeframe<sup>1</sup>. These members considered that it would be time-consuming and costly for uncontested candidates to seek relief from the Court to extend the submission deadline for their ERs. They requested the Administration to consider extending the deadline for uncontested candidates to submit their ERs in such circumstances.

5. After review, the Administration consulted the Panel at the meeting on 20 April 2015 on a proposal of extending the period allowed for ER submission by uncontested candidates in LegCo elections so that it would end on the same date as that allowed for contested candidates of the election. Members did not raise objection to the proposal.

#### Updating the electorate of ECSSs and the corresponding functional constituencies ("FCs")

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6. In preparation for the 2016 ECSS elections and in keeping with the established practice, the Administration has reviewed the delineation of the electorate of all ECSSs in consultation with relevant bureaux/departments and made reference to the recent updating exercise for the delineation of the electorate of LegCo FCs<sup>2</sup>.

7. According to the Administration, its current proposals under the Bill involve making only necessary technical amendments to the legislation concerning the electorate of certain ECSSs, and corresponding amendments to the relevant LegCo FCs which have the same electorate. Details of the proposed amendments are set out at Annex B to the LegCo Brief (File Ref: CMAB C1/30/5/4/1) issued by the Constitutional and Mainland Affairs Bureau on 9 December 2015.

#### Aligning the electoral arrangements of ECSS Elections and CE Election with other public elections

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8. In preparation for the 2016 ECSS elections and the 2017 CE election, the

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<sup>1</sup> At present, in accordance with the existing provisions in relevant legislation, uncontested candidates in public elections such as LegCo election are required to submit their ERs earlier than contested candidates of the same election. For example, according to section 37(2) of ECICO, in the case of LegCo election, the candidate must ensure that his/her ER is submitted not later than 60 days after the date of publication of the result of the election. As the election results of uncontested constituencies must be published in the Gazette within 14 days of the expiry of the nomination period in accordance with the law, that date of publication will be a few weeks earlier than the date when the election results of contested constituencies are published.

<sup>2</sup> Relevant updates to the electorate for FCs were included in the Electoral Legislation (Miscellaneous Amendments) Bill 2015, which was passed by LegCo on 13 July 2015. The updates only involved necessary technical amendments to the electorates.

Administration proposes to introduce amendments similar to those introduced by the Electoral Legislation (Miscellaneous Amendments) Bill 2014 to align the electoral arrangements of ECSS elections and CE election with those of other public elections. The Electoral Legislation (Miscellaneous Amendments) Bill 2014, which was passed by LegCo on 10 July 2014, included technical amendments for improving the clarity of the relevant provisions and refining the procedural requirements for LegCo, DC, and the Rural Representative ("RR") elections, in the light of experience gained from previous elections. For example, the Electoral Legislation (Miscellaneous Amendments) Bill 2014 sought to provide that the fallback period in the case of postponement of an election or postponement or adjournment of a poll or a count in LegCo, DC and RR elections should in all circumstances be changed from two to 14 days, in order to provide sufficient flexibility in conducting or resuming the event, and to be in line with the fallback timeframe in dealing with postponement or adjournment due to a typhoon or other climatic condition of a serious nature, or riot or open violence or other occurrence of public danger. The Electoral Legislation (Miscellaneous Amendments) Bill 2014 has also introduced specific provisions to provide that the statutory deadlines which fall on an inclement weather warning day (i.e. a working day on which a gale warning or a black rainstorm warning is in force at any time during the ordinary business hours of the relevant authorities) should be extended to the following working day that is not an inclement weather warning day to compensate for the time lost for completing the relevant acts or procedures. Similar amendments are included in the Bill to align the electoral arrangements of ECSS elections and CE election with the other public elections.

### **Major concerns raised by the Panel**

9. The Administration consulted the Panel on the proposals contained in the Bill at its meeting on 19 October 2015. While members did not raise objection to the proposal of aligning the deadlines for filing ERs, some members expressed concerns on issues relating to the postponement or adjournment of an election, poll or count. The concerns expressed by members are set out in ensuing paragraphs.

10. Members noted that under the existing electoral law governing ECSS and CE elections, it was necessary to postpone or adjourn an election, a poll or count due to riot, open violence or other occurrence of public danger; a typhoon or other climatic condition of a serious nature; or an occurrence which appeared to be a material irregularity. Hon CHAN Chi-chuen enquired about the possible situations to be covered under the scenario of "riot, open violence or other occurrence of public danger", and the relevant authority to invoke the postponement/adjournment mechanism in those situations. The Administration advised that generally speaking, the Electoral Affairs Commission ("EAC") was vested with the authority to decide whether an election, poll or count would be

postponed/adjourned if it appeared that the election, poll or count was likely to be obstructed, disrupted, undermined or seriously affected by three types of occurrence, namely (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 appeared to be a material irregularity relating to the election, poll or count. The Administration explained that while the situations under the scenario of "riot, open violence or other occurrence of public danger" were not specified in the electoral legislation, EAC and the Registration and Electoral Office ("REO") would draw up contingency plans to deal with possible situations. As part of the overall contingency plans, a Crisis Management Committee would be set up, where necessary, to provide advice to EAC on the handling of any crises relating to ECSS elections and CE election and, in particular, all matters concerning postponement/adjournment of an election, poll or count under the three aforesaid occurrences. The Crisis Management Committee would be chaired by the EAC Chairman and would comprise all EAC Members and representatives of relevant government bureaux/departments.

11. Hon LEUNG Kwok-hung expressed concern about who would be appointed to the Crisis Management Committee to provide advice to EAC. He considered that these persons had to be held accountable to the public. The Administration explained that EAC, as an independent statutory body, was vested with the authority, as set out in the relevant electoral legislation, to decide whether an election had to be postponed/adjourned. The Administration further explained that before making a decision on whether the election/poll should be postponed/adjourned under the various occurrences, EAC, assisted by the Crisis Management Committee, would take into account the professional advice rendered by relevant government bureaux/departments (such as the Hong Kong Observatory and the Security Bureau) as appropriate to assess the situation at the time.

12. Hon TAM Yiu-chung suggested that the Administration should consider devising a plan for handling the scenario where an occurrence of a public danger incident might not be settled by the end of the 14-day fallback period. The Administration advised that as in the past elections, REO would draw up contingency plans and devise appropriate arrangements to deal with possible situations.

13. Some members expressed concern as to whether the election expenses limits ("EELs") would be increased if an election was postponed. The Administration advised that EELs were set out in ECICO. EELs would not be increased even if an election was postponed, and candidates could continue to conduct electioneering activities subject to the ceiling of the election expense.

14. Hon IP Kwok-him sought clarification as to whether the proposed 14-day fallback arrangement meant that the postponed or adjourned election, poll or count could only be held or resumed on the 14<sup>th</sup> day after the postponement or adjournment. The Administration clarified that the current proposal only required that the postponed/adjourned election, poll or count had to be held/resumed not more than 14 days after the postponement or adjournment. It did not preclude REO from holding the postponed/adjourned election on the immediately following Sunday.

### **Relevant documents**

15. A list of the relevant papers available on the LegCo website is in **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
5 January 2016

## Appendix

### Relevant papers on Bills Committee on Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015

Committee	Date of meeting	Paper
Panel on Constitutional Affairs ("CA Panel")	23 April 2014 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	2 July 2014	<a href="#">Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2014</a>
CA Panel	20 April 2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19 October 2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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