

**Legislative Council Panel on Constitutional Affairs**

**Proposed Guidelines on Election-related Activities  
in respect of the Legislative Council Election  
issued by the Electoral Affairs Commission**

**PURPOSE**

This paper seeks Members' views on the Proposed Guidelines on Election-related Activities in respect of the Legislative Council ("LegCo") Election ("the proposed guidelines") issued by the Electoral Affairs Commission ("EAC").

**BACKGROUND**

2. Under section 6(1)(a) of the EAC Ordinance (Cap. 541), the EAC may issue guidelines relating to the conduct or supervision of an election. These guidelines aim to provide a code of conduct based on the principle of fairness and equality for conducting election-related activities. They also give guidance in layman's language on compliance with the relevant electoral legislation.

3. It has been the established practice of the EAC to update and publish the guidelines before an LegCo general election, for adoption in the general election and any by-elections to be held thereafter. The updated guidelines will incorporate changes in the electoral legislation and take into account revisions which are needed in the light of past experience to enhance and align the provisions therein.

4. Since the guidelines were last updated in June 2012, legislative amendments have been made to the electoral legislation to effect a number of changes relating to the electoral and voter registration arrangements, e.g., the number of seats allocated to the 5 geographical constituencies of the LegCo, the timeframe of the voter registration cycle, the means of delivery of electoral notices by candidates, counting procedures for the main counting stations and central counting station, notice of designation of polling and counting stations, the subsidy rate of financial assistance and the election expenses limits for candidates/lists of candidates of the LegCo election, etc.

## THE PROPOSED GUIDELINES

5. The next LegCo general election will be held on 4 September 2016 and, in this regard, the EAC released the proposed guidelines on 3 March 2016 for public consultation. The consultation period will end on 1 April 2016. The guidelines finalised afterwards will be adopted in the 2016 LegCo general election and any by-elections to be held afterwards. Compared to the last edition, the major revisions in the proposed guidelines are-

- (a) to reflect the legislative amendments in respect of the LegCo election referred to in paragraph 4 above;
- (b) to reflect the alignment of deadlines relating to voter registration applications and request for change of registration particulars, and the adoption of surface mail for delivery of inquiry letters and other voter registration notices<sup>1</sup>;
- (c) to reflect the legislative amendments to be made to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) for alignment of deadlines for candidates to file election returns, and the technical amendments to be made to the Legislative Council Ordinance (Cap. 542) for updating the electorate of the functional constituencies<sup>2</sup>; and
- (d) to elaborate on certain parts of the guidelines to facilitate the public to enhance understanding of the content of those parts and, where appropriate, to align the content of the proposed guidelines with the relevant parts of other electoral guidelines.

6. In drawing up the proposed guidelines, the EAC has taken into account the operational experience in past elections and has suggested revisions in the interest of clarity and compliance. Furthermore, relevant government departments have been consulted on the parts of the proposed guidelines which fall within their respective work purviews. For Members' easy reference, the major changes, as compared with the existing guidelines, are set out at the **Annex**. Most of the changes are for alignment purpose between the proposed guidelines and other electoral guidelines. Similar

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<sup>1</sup> The relevant amendments are implemented through amending the relevant regulations under the EAC Ordinance. The relevant amendment regulations have completed the negative vetting process, and will come into operation on 18 March this year.

<sup>2</sup> The Government introduced the Electoral Legislation (Miscellaneous Amendments) (No. 2) Bill 2015 into the LegCo in December 2015 to make the relevant amendments. The Bills Committee has completed scrutiny of the Bill, and the resumption of the Second Reading debate on the Bill has been scheduled for the Council meeting of 20 April this year.

changes have been incorporated in the Guidelines on Election-related Activities in respect of the District Council Election published in September 2015.

## **PUBLIC CONSULTATION PERIOD**

7. Section 6(2) of the EAC Ordinance stipulates that the EAC shall consult the public in relation to the guidelines. The public consultation for the proposed guidelines runs for a period of 30 days from 3 March to 1 April 2016 (both dates inclusive).

8. During the consultation period, members of the public are welcome to submit their views on the proposed guidelines to the EAC in writing. They may also attend the public forum to be held on 17 March 2016 to present their views to the EAC orally.

9. The EAC will take into account the views received during the public consultation period in finalising the guidelines. The finalised guidelines will be issued around late June 2016.

## **ADVICE SOUGHT**

10. Copies of the proposed guidelines have been distributed to Members. Members are invited to note and comment on the proposed guidelines. Members are also welcome to forward their views to the EAC Secretariat by post (at 10/F Harbour Centre, 25 Harbour Road, Wan Chai, Hong Kong), by fax (fax no.: 2511 1682) or by e-mail ([eacenq@reo.gov.hk](mailto:eacenq@reo.gov.hk)), during the public consultation period.

Registration and Electoral Office  
March 2016

**Major Proposed Changes  
in the Proposed Guidelines on Election-related Activities  
in respect of the Legislative Council Election  
as Compared with the Guidelines Issued in June 2012**

<b>Relevant Chapter</b>	<b>Major changes</b>
<p><b>Chapter 1</b> <i>Introduction</i></p>	<ul style="list-style-type: none"> <li>● updating the number of members to be returned from the 5 Geographical Constituencies (“GCs”) in the sixth term of the Legislative Council (“LegCo”) in accordance with the Declaration of Geographical Constituencies (Legislative Council) Order 2015 (<b>para. 1.5</b>).</li> </ul>
<p><b>Chapter 2</b> <i>Geographical constituencies</i>  <i>and</i>  <b>Chapter 3 and Appendix B</b> <i>Functional constituencies</i></p>	<ul style="list-style-type: none"> <li>● revising the key dates of voter registration timeframe in accordance with the amendments made to sections 4, 13(1), 14(2) and 15(7) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap 541A) (“EAC (ROE) (GC) Reg”) (<b>paras. 2.8, 2.15 and 2.19</b>); and sections 19, 29(1)(a), 30(2) and 31(8) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap 541B) (“EAC (ROE) (FCSEC) Reg”) (<b>paras. 3.19, 3.25 and 3.31</b>);</li> <li>● aligning the deadline for change of registration particulars with the deadline for new registration and using surface mail, instead of registered post, for sending all inquiries and notifications to electors in accordance with the proposed amendments to sections 7(2), 11(5) and 17(9)(a) of EAC (ROE) (GC) Reg, and sections 22(3), 26(5) and 33(10)(a) of EAC (ROE) (FCSEC) Reg, which will take effect from 18 March 2016 (<b>paras. 2.9, 2.13, 3.20 and 3.23(d)</b>);</li> <li>● setting out clearly the Electoral Registration Officer’s checking measures to ensure the accuracy of the electors’ particulars in the registers and stating that it is an offence</li> </ul>

Relevant Chapter	Major changes
	<p>to knowingly or recklessly give false or misleading information for voter registration (<b>para. 2.14</b>);</p> <ul style="list-style-type: none"> <li>● setting out clearly the electoral arrangements in the law in case of the death or disqualification of a validly nominated candidate during different periods of an election (<b>paras. 2.28 to 2.30 and 3.39 to 3.43</b>); and</li> <li>● updating the electorate of the Functional Constituencies (“FC”), <i>subject to the enactment</i> of the proposed amendments to the Legislative Council Ordinance (Cap 542) (“LCO”) (<b>paras. 3.7 to 3.9 and Appendix B</b>).</li> </ul>
<p><b>Chapter 4</b> <i>Nomination of candidates</i></p>	<ul style="list-style-type: none"> <li>● updating the guidelines to include the disqualification provision for a resigned LegCo Member at a by-election in accordance with the amendment made to section 39(2A) of the LCO (<b>para. 4.5(l)</b>).</li> </ul>
<p><b>Chapter 5</b> <i>Polling and counting arrangements</i></p>	<ul style="list-style-type: none"> <li>● specifying a deadline for gazetting the list of polling stations, ballot paper sorting stations and counting stations and revising the deadline for the Returning Officer to give notice to candidates about of the place(s) and time of the counting of votes in accordance with the amendments made to sections 28(1) and 65(5) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap 541D) (“EAC (EP) (LC) Reg”) (<b>para. 5.2</b>);</li> <li>● specifying the procedure for handing over to an elector/authorised representative all his/her entitled ballot papers at the same time in accordance with the amendment made to section 53(4A) of the EAC (EP) (LC) Reg (<b>para. 5.25</b>); and</li> <li>● amending the description of counting procedures for main counting stations for the GCs election and the central counting station for the District Council (second) FC election in accordance with the amendments made to</li> </ul>

Relevant Chapter	Major changes
	sections 74A, 74AAA(2) and 77A(1A) of the EAC (EP) (LC) Reg ( <b>paras. 5.71 and 5.88</b> ).
<p><b>Chapter 7</b> <i>Appointment and roles of election agent, election expense agents, polling agents and counting agents</i></p>	<ul style="list-style-type: none"> <li>● updating the guidelines to include the use of electronic mail as a means of delivery of certain electoral documents, such as notices of appointment and revocation of appointment of election agents, election expense agents, polling agents and counting agents in accordance with the amendments made to sections 23(16) and (18), 25(10) and (15A), 42(8AA), (14) and (14A), 66(5A) and (10A) of the EAC (EP) (LC) Reg (<b>Parts V to VIII of the Chapter</b>).</li> </ul>
<p><b>Chapter 8</b> <i>Election advertisements</i></p>	<ul style="list-style-type: none"> <li>● reminding any person or organisation publishing materials to appeal directly or indirectly to electors to vote or not to vote for certain candidates or candidates of certain organisations to observe the legislative requirements for incurring election expenses on the behalf of candidates since the materials may be capable of being understood as referring to certain identified candidates (<b>para. 8.3</b>);</li> <li>● reminding candidates and web surfers that messages published through internet platforms with the intention to promote or prejudice the election of any candidates would be regarded as election advertisements (“EAs”) and the parties concerned should comply with all legislative requirements for incurring election expenses and publication of EAs (<b>para. 8.4</b>);</li> <li>● reminding any person who intends to stand as a candidate at the election should ensure that all publicity materials published by him/her in the constituency concerned prior to the election period are removed before he/she has been nominated as a candidate or has publicly declared an intention to run for the election. Otherwise, any such unremoved publicity material may be regarded as an EA (<b>para. 8.6</b>); and</li> </ul>

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> <li>● reminding candidates to follow the application guidelines issued by the Lands Department for temporary occupation of government land at public place for holding electioneering activities (<b>Part V of the Chapter</b>).</li> </ul>
<p><b>Chapter 9, Appendix I and J</b> <i>Electioneering activities at premises or buildings where electors reside, work or frequent</i></p>	<ul style="list-style-type: none"> <li>● updating the guidelines issued by the Office of the Privacy Commissioner for Personal Data (“OPCPD”) to remind candidates to adopt security measures when transferring personal data of electors to election agents or other contractors for electioneering purpose (<b>para. 9.18 and Appendix I</b>);</li> <li>● incorporating a case as suggested by the OPCPD to remind candidates who wish to use the personal data collected from other sources for electioneering purpose to state clearly the usage of the data at the time of collection (<b>Appendix J</b>);</li> <li>● requesting candidates to respect the elector’s privacy when using their contact information for canvassing and reminding them to use the “bcc” function of email for mass distribution of EAs over email to prevent inadvertent disclosure of the email addresses (<b>para. 9.19</b>); and</li> <li>● reminding the office bearers of building organisations not to abuse their positions in the organisations to give unfair treatment to any candidate in the conduct of electioneering or canvassing activities in the buildings concerned, especially when, for example, the office bearers themselves are candidates in the election (<b>para. 9.31</b>).</li> </ul>
<p><b>Chapter 11</b> <i>Election broadcasting, media reporting and election forums</i></p>	<ul style="list-style-type: none"> <li>● elaborating on the requirement of the fair and equal treatment principle in producing and conducting election-related and news reporting programmes by broadcasters licensed under the Broadcasting Ordinance (Cap 562) and the Telecommunications Ordinance (Cap 106) (<b>paras. 11.3 to 11.5, 11.10 and 11.22</b>); and</li> </ul>

Relevant Chapter	Major changes
	<ul style="list-style-type: none"> <li>reminding the print media to ensure that any news reporting or reference made in their publications should not give unfair publicity to any particular candidate/list of candidates in accordance with the fair and equal treatment principle (<b>paras. 11.19 and 11.21</b>).</li> </ul>
<b>Chapter 15</b> <i>Exit poll</i>	<ul style="list-style-type: none"> <li>updating the administrative procedures in approving the application for the conduct of exit polls and the enhanced measures to be adopted to ensure the fairness of election (<b>paras. 15.5, 15.7 and 15.9</b>).</li> </ul>
<b>Chapter 16 and Appendix R</b> <i>Election expenses and election donations</i>	<ul style="list-style-type: none"> <li>reminding candidates of the need of apportionment of expenses between election-related purposes and any other purposes (<b>para. 16.6</b>);</li> <li>revising the maximum amount of election expense which can be incurred by or on behalf of a candidate/list of candidates in accordance with the amendments made to sections 3, 3A and 4 of the Maximum Amount of the Election Expenses (Legislative Council Election) Regulation (Cap 554D) (<b>para. 16.10</b>);</li> <li>reminding candidates, or any person or organisation acting as an agent for the candidate(s) to comply with all the legislative requirements in seeking or soliciting election donations and to adopt the suggested good practice in Appendix R (<b>para. 16.22</b>);</li> <li>aligning the deadlines for submitting the return and declaration of election expenses and election donations for all candidates in the same election, <i>subject to the enactment</i> of the proposed amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) (<b>para. 16.26</b>); and</li> </ul>



Relevant Chapter	Major changes
	<ul style="list-style-type: none"> <li>revising the subsidy rate of financial assistance for the eligible candidates/lists of candidates in accordance with the amendments made to Schedule 5 to the LCO (<b>para. 16.38</b>).</li> </ul>
<b>Chapter 18</b> <i>Namedropping</i>	<ul style="list-style-type: none"> <li>setting out clearly the guidelines for giving consent of support when the office title of the supporter providing the consent and/or the name of the organisation concerned are mentioned (<b>para. 18.4</b>).</li> </ul>