

立法會

Legislative Council

LC Paper No. CB(2)568/18-19

Ref : CB2/BC/6/17

Report of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2018

Purpose

This paper reports the deliberations of the Bills Committee on Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bills Committee").

Background

2. According to the Administration, there was a substantial increase in the number of notices of objection received by the Registration and Electoral Office ("REO") during the 2015 Voter Registration ("VR") cycle. Some members of the public considered that some objectors abused the objection mechanism by making objections without sound justification and not attending hearings to make representations. Some were of the view that the Government should take measures to prevent abuse of the objection mechanism. Besides, some suggested that for cases which were clearly without merits, they might not need to be passed to the Revising Officer ("RevO") for hearings so as to minimize impact on the electors concerned. There was also a view that the penalties for provision of false information in VR should be raised in order to enhance the deterrent effect.

3. From 26 November 2015 to 8 January 2016, the Constitutional and Mainland Affairs Bureau ("CMAB") conducted a public consultation exercise on proposals to enhance the VR system. CMAB published the Consultation Report on Enhancement of VR System on 21 January 2016, putting forward a series of measures, including the proposals to raise the penalties for the offences of making false statements in VR and improve the objection mechanism.

4. Furthermore, in light of the experiences gained from the various elections in the 2015 to 2017 election cycle, CMAB conducted a review of electoral arrangements, and launched a public consultation exercise on the review between 13 November and 29 December 2017. The Consultation Report on Review of Electoral Arrangements was published on 15 May 2018. It was proposed in the Consultation Report that the Government should introduce a targeted exemption of the criminal liability under the Elections (Corrupt and

Illegal Conduct) Ordinance ("ECICO") (Cap. 554) in respect of a third party (i.e., an individual or a body that was neither the candidate whose election was being promoted or prejudiced nor his/her election expense agent) who incurred merely electricity and/or Internet access charges in publishing election advertisements ("EAs") on the Internet (including social media).¹

The Electoral Legislation (Miscellaneous Amendments) Bill 2018 ("the Bill")

5. The Bill seeks to amend 21 items of electoral legislation in relation to the elections of the Legislative Council ("LegCo"), District Councils, Chief Executive ("CE"), Election Committee ("EC") Subsectors and Rural Representatives ("RR") to:

- (i) increase the maximum penalties for certain offences relating to VR;
- (ii) streamline the mechanism for appeals, claims and objections relating to registration of electors or voters;
- (iii) introduce an exemption from criminal liability for incurring election expenses for publishing EAs on the Internet; and
- (iv) make other technical and miscellaneous amendments to the electoral legislation such as replacing the stamping requirement for certain ballot papers.

6. Details of the above legislative proposals as explained by the Administration are set out in paragraphs 3 to 21 of the LegCo Brief (File Ref.: CMAB C1/30/5/4) issued by CMAB on 27 June 2018.

7. Clause 1(2) and (3) of the Bill provides that the Bill, if passed, would come into operation on the day on which it is published in the Gazette ("the Gazettal Date"), except for the provisions specified in clause 1(4) of the Bill,

¹ Under ECICO, election expenses can only be incurred by a candidate or his/her election expense agent, and the aggregate amount of election expenses incurred by or on behalf of the candidate is subject to a prescribed threshold. A person other than a candidate or a candidate's election expense agent, who incurs election expenses at or in connection with the relevant election, commits an offence. The maximum penalties for the offence, as provided in section 22 of ECICO, are a fine at level 5 (currently \$50,000) and imprisonment for one year upon summary conviction, and a fine of \$200,000 and imprisonment for three years upon conviction on indictment.

which would come into operation on 1 February 2019 or on the Gazettal Date if such date is later than 1 February 2019.²

The Bills Committee

8. At the House Committee meeting on 5 October 2018, members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix I**.

9. Under the chairmanship of Hon CHEUNG Kwok-kwan, the Bills Committee has held four meetings with the Administration and received views from the public at one of the meetings. A list of the organizations and individuals which/who have given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Increase of maximum penalties for certain offences relating to voter registration

10. Members note that the Administration proposes to increase the maximum penalties for making false statements in VR as provided in the relevant items of subsidiary legislation made under the Electoral Affairs Commission Ordinance (Cap. 541) from the current maximum penalties of a fine at level 2 (currently \$5,000) and imprisonment for six months to a fine at level 3 (currently \$10,000) and imprisonment for two years. Dr Hon CHIANG Lai-wan has expressed concern about the impact of the proposal and whether it may dampen the desire of members of the public to register as electors. She is also concerned whether a person would be regarded as having made false statements in VR if the person has just inadvertently provided incorrect information in his/her VR application form.

11. The Administration has explained that the above proposal is made taking into account the severity of the offences of making false statements in VR and public concerns over the accuracy of registration particulars. The Administration considers the proposed penalty level not particularly high as compared with that for other comparable offences. The Administration has

² The provisions specified in clause 1(4) of the Bill relate to RR elections. According to the Administration, the 2019 Rural Ordinary Election will be held in early 2019 and relevant preparatory work has commenced in early 2018. The aforesaid commencement arrangement aims to provide certainty for this Election and to avoid implications on the preparatory work. In addition, as the Election will be held on three consecutive Sundays in January 2019, setting the commencement date as 1 February 2019 or later can ensure consistency of the electoral arrangements for the rural areas regardless of the different polling days and irrespective of the progress of the scrutiny of the Bill.

stressed that it would not take a case to the court lightly. In case of queries about the registration particulars, REO would first seek clarifications from the elector concerned. The Administration has explained that the proposal is targeted at criminals committing the offences of providing false statements in making VR. It does not consider that the proposal would affect the desire of members of the public to register as electors. The Administration takes the view that the current proposal is able to strike a right balance.

Streamlining mechanism for appeals, claims and objections relating to registration of electors or voters

12. Members note that at present, a hearing would still be conducted even if the case only involves clerical errors in an elector's registration particulars or the person in respect of whom the objection is made has already provided updated or correct particulars. There is a view that this arrangement has brought unnecessary annoyance to the electors being objected to. Some members including Hon CHAN Han-pan, Dr Hon CHIANG Lai-wan and Hon Holden CHOW consider that improvements should be made to the operation of the objection mechanism to alleviate the impact on the electors concerned. They also consider that lodging an objection merely based on speculations with unfounded basis should not be allowed. In response to members' concerns, the Administration has advised that it is now proposed:

- (i) to specify in the law that it is the duty of the person lodging a claim or an objection ("appellant") to provide sufficient information relevant to the case;
- (ii) to empower RevO to dismiss the case direct if the appellant or his/her representative does not attend the hearing; and
- (iii) regarding incontrovertible claim and objection cases, to allow the Electoral Registration Officer ("ERO") to seek the ruling of RevO by written submissions in lieu of hearings.

Appellant's responsibility to provide sufficient information about the case

13. The Administration proposes to specify in the law that it is the duty of the appellant to provide sufficient information about the case, so as to inform RevO, ERO and, in relation to an objection, the person in respect of whom the objection is made of the grounds of the claim or objection.³ Dr Hon CHIANG

³ Apart from claim and objection cases, this proposal would also apply to appeals against the ERO's decisions not to register replacements or substitutes of authorized representatives for functional constituencies or subsectors.

Lai-wan has expressed concern about how assessment would be made as to whether "sufficient" information has been provided. She has requested the Administration to give examples to elaborate the meaning of the expression "sufficient information" in the above proposal.

14. The Administration has explained that what information the appellant should provide specifically to be deemed sufficient is subject to the content of the case and the actual circumstances. As the circumstances of each objection or claim are different, it is not practicable to list all possibilities. The Administration has advised that the relevant amendments serve mainly to clarify that RevO should determine that the objection or claim is unsubstantiated if the information provided by the appellant is insufficient. The Administration considers that this would assist RevO to handle such cases more effectively.

15. The Administration has provided an example such that if the objector raises that the building at the address of the elector concerned has already been demolished, simple information such as the demolition record of the building and even photos or videos may already be sufficient to prove that the address does not exist. The Administration has also advised that if the objector objects to the elector's registration on the grounds of "same address with multiple electors or electors with multiple surnames", the objection should be supplemented with the specific circumstances in respect of the address including, among others, the actual reasons for suspecting the elector to be not residing at the address, such as the address having a sole occupant to the objector's knowledge. The Administration has further advised that if the objector objects to the elector's registration on the grounds that the elector is no longer residing ordinarily in Hong Kong, the objector should provide information to show prolonged absence of the elector from Hong Kong, rather than merely raising such speculations as someone may be no longer residing in Hong Kong.

16. Hon AU Lok-hin has expressed concern about whether the objector is to bear the burden of proof under this proposal. If that is the case, he queries whether the proposal would be enforceable as it would be extremely difficult for objectors to conduct investigations and produce evidence.

17. The Administration has clarified that the objector is not required to bear the burden of proof. The reason for using the expression "provide sufficient information" in the legislative proposal is to state clearly that it is the duty of the appellant to provide sufficient information relevant to the case. The Administration has pointed out that objection cases are heard by an independent RevO. RevO would make a ruling after considering the details of the case, the grounds advanced by the appellant and relevant evidence. Moreover, in future objectors would be required to appear and explain at hearings why the persons being objected to are not qualified as electors, which would also facilitate RevO

to understand the justifications for the objection. Given that voting right is a fundamental right, the Administration considers it justified to prescribe in the law that the objector has the responsibility to provide sufficient information for his/her objection in order to show that the objection is based on reasonable doubts and facts.

Attendance of the appellant at the hearings

18. Members have raised no objection to the proposal that an option would be provided for RevO to dismiss the claim or objection case direct if the appellant or his/her representative does not attend the hearing, regardless of whether the appellant has made representations in writing regarding the case. Apart from claim and objection cases, this proposal would also apply to appeals against the ERO's decisions not to register replacements or substitutes of authorized representatives for functional constituencies ("FCs") or subsectors.

Processing incontrovertible claim and objection cases by written submissions

19. Members note that under the existing objection mechanism, hearings have to be conducted for all claim and objection cases. The Administration proposes that if any of the following conditions is met:

- (i) no ground is submitted in a claim or an objection;
- (ii) the ground(s) submitted by the appellant are irrelevant to registration eligibility; or
- (iii) the case involves only a clerical error made in compiling or printing a relevant register,

ERO would request RevO to determine the case by written submissions and RevO must direct that the case be determined without a hearing on the basis of written submissions only.

20. According to the Administration, this proposal would alleviate the workload of RevO and reduce possible inconvenience caused to the electors concerned. The Administration has advised that the appellants and the person in respect of whom the objection is made can still request to review the ruling made under this mechanism (a hearing will then be conducted) if he/she is not satisfied with RevO's ruling.

21. The Legal Adviser to the Bills Committee has enquired about the reasons that the above proposal (i.e., RevO determining a case without a hearing on the basis of written submissions only) does not apply in relation to:

- (i) an appeal as defined in section 1 of the Registration of Electors (Appeals) Regulation (Cap. 542B)⁴ or in section 1 of the Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B)⁵;
- (ii) a claim or an objection made regarding the registration of a person as a member of EC; and
- (iii) RR elections.

22. The Administration has explained that having considered the views received in the public consultation on enhancement of the VR system conducted in late 2015, regarding incontrovertible claim and objection cases, it is proposed to allow ERO to seek the ruling of RevO by written submissions in lieu of hearings. The proposal focuses on the claim or objection cases concerning geographical constituencies ("GCs"), FCs or subsectors that have to be processed within the deadlines of the annual VR cycle.

23. As regards cases of types (i) and (ii) in paragraph 21 above, they have all along been dealt with separately from the claims or objection cases concerning GCs, FCs or subsectors under the existing electoral legislation. As regards cases of type (iii) on RR elections, since the eligibility for registration as electors of RR elections is different from that of GCs, FCs or subsectors, the types and nature of the claim or objection cases in relation to RR elections are therefore different. In addition, the relevant statutory deadlines for handling the above three types of cases are different from the statutory deadlines under the annual VR cycle for handling claim or objection cases concerning GCs, FCs or subsectors. Having considered the above, the Administration does not consider it suitable to introduce the option of written submissions in lieu of hearings in determining the above three types of cases.

Introducing an exemption from criminal liability for incurring election expenses for publishing election advertisements on the Internet

24. Members in general support the proposed targeted exemption as detailed in paragraph 4 above. Hon Alice MAK has enquired whether a third party who

⁴ It means an appeal made under the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) against the decision of ERO not to register as an authorized representative a person appointed by a corporate elector as a replacement or a substitute under section 20 of Cap. 541B.

⁵ It means an appeal made under Cap. 541B against the decision of ERO not to register as an authorized representative a person appointed by a corporate voter as a replacement or a substitute under section 20 of Cap. 541B.

places an online advertisement to promote a candidate, or produces a video for a candidate and posts that video on social media, or forwards such a video (not produced by him/her) to others through the Internet, would be eligible for the proposed targeted exemption.

25. The Administration has explained that under ECICO, any form of publication published for the purpose of promoting or prejudicing the election of a candidate or candidates at the election constitutes an EA. Hence, the aforementioned forms of publication can be regarded as EAs, and the proposed exemption would apply if the election expenses incurred by the third party in publishing EAs are merely electricity and/or Internet access charges. However, one cannot enjoy the proposed exemption if other election expenses (e.g. the production cost involved for relevant EAs) are incurred. The Administration has pointed out that the above proposal would not affect the obligation of candidates or their election expense agents under the existing electoral legislation. The definitions of EAs and election expenses under the existing legislation would also remain intact.

Proposed amendments to the Bill

26. In response to the observations given by the Legal Adviser to the Bills Committee in relation to the Bill, the Administration proposes to introduce technical amendments to the Bill as delineated in paragraphs 27 to 31.

Streamlining mechanism for appeals, claims and objections relating to registration of electors or voters

27. The Administration proposes that amendments be made to clause 10 of the Bill to beef up the proposed new section 32(4) and (5) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B) in order to clarify that the scope of the proposed new section 32(6) and (7) on processing incontrovertible claim and objection cases by written submissions is confined to notices of claim/objection received in respect of a FCs provisional register or a subsector provisional register.

Returning Officer to prepare ballot paper statements

28. The Administration proposes that amendments be made to Part 6 of the Bill (please see clauses 56 and 61 and new clauses 56A and 61A of the Bill) to better reflect the existing arrangement that in the EC Subsector Elections and the CE Election, the Returning Officer of the respective election is to prepare a statement of ballot papers that are not counted, irrespective of whether the ballot

papers concerned are questionable ballot papers or clearly invalid ones. Consequential amendments are also proposed to be made to update the references to the relevant provisions in the electoral legislation concerned (please see new clauses 56B, 62A and 62B of the Bill).

Other amendments or refinements

Amendments to references

29. The Administration proposes that amendments be made to clauses 12(2) and (3) as well as 19(2) and (3) of the Bill to correct certain references and to add appropriate references to relevant sections of the electoral legislation concerned.

Definition of "sub-subsector" in the Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap. 569C)

30. The Administration proposes that amendment be made to clause 65 of the Bill to clarify the meaning of the term "sub-subsector".

Removing obsolete reference to repealed provision

31. The Administration proposes that amendment be made to section 31(10) of Cap. 541B to remove the obsolete reference to section 26(5)(a), which has already been repealed.

32. Members have not raised objection to the amendments to be moved by the Administration to the Bill as elaborated in paragraphs 27 to 31. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate

33. Subject to the moving of the amendments to the Bill by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 16 January 2019.

Consultation with the House Committee

34. The Bills Committee reported its deliberations to the House Committee on 4 January 2019.

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018**

Membership list*

Chairman Hon CHEUNG Kwok-kwan, JP

Members Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, BBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon CHIANG Lai-wan, SBS, JP
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Holden CHOW Ho-ding
Hon LUK Chung-hung, JP
Hon AU Nok-hin

Total : 18 Members

Clerk Ms Joanne MAK

Legal Adviser Ms Wendy KAN

Date 18 December 2018

* Changes in membership are shown in Annex to Appendix I.

Annex to Appendix I

**Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018**

Changes in membership

Member	Relevant date
Hon IP Kin-yuen	Up to 17 December 2018

《2018 年選舉法例(雜項修訂)條例草案》委員會
Bills Committee on Electoral Legislation
(Miscellaneous Amendments) Bill 2018

曾向法案委員會表達意見的團體/個別人士名單
List of organizations/individuals which/who have
submitted views to the Bills Committee

名稱

Name

- | | |
|-------------|--|
| 1. 民主建港協進聯盟 | Democratic Alliance for the Betterment and Progress of Hong Kong |
| 2. 活力離島 | The Dynamic Island |
| 3. 梁國雄先生 | Mr LEUNG Kwok-hung |