

立法會
Legislative Council

LC Paper No. LS95/17-18

**Paper for the House Committee Meeting
on 5 October 2018**

**Legal Service Division Report on
Electoral Legislation (Miscellaneous Amendments) Bill 2018**

I. SUMMARY

- 1. The Bill**

The Bill seeks to amend 21 items of electoral legislation in relation to the elections of Legislative Council, District Councils, Chief Executive, Election Committee Subsectors and Rural Representatives to:

 - (a) increase the maximum penalties for certain offences relating to voter registration;
 - (b) streamline the voter registration system;
 - (c) introduce an exemption from criminal liability for incurring election expenses for publishing election advertisements on the Internet; and
 - (d) make other technical and miscellaneous amendments to the electoral legislation.
- 2. Public Consultation**

The Administration conducted public consultations on enhancement of the voter registration system between November 2015 and January 2016 and on review of the electoral arrangements between November 2017 and December 2017. Some of the proposals contained in the Bill are made after considering the views received.
- 3. Consultation with LegCo Panel**

The Panel on Constitutional Affairs was consulted on 21 May 2018. Members in general raised no objection to the legislative proposals but expressed various concerns.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of changes to the electoral arrangements and procedures under the electoral legislation, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 11 July 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: CMAB C1/30/5/4) issued by the Constitutional and Mainland Affairs Bureau on 27 June 2018 for further details.

Object of the Bill

2. The Bill seeks to amend 21 items of electoral legislation in relation to the elections of LegCo, District Councils ("DC"), Chief Executive ("CE"), Election Committee Subsectors ("ECSS") and Rural Representatives ("RR") (at **Appendix**) to:

- (a) increase the maximum penalties for certain offences relating to voter registration;
- (b) streamline the voter registration system;
- (c) introduce an exemption from criminal liability for incurring election expenses for publishing election advertisements on the Internet; and
- (d) make other technical and miscellaneous amendments to the electoral legislation.

Provisions of the Bill

3. The main provisions of the Bill are summarized in the ensuing paragraphs.

Increasing the maximum penalties for certain offences relating to voter registration (Part 2 of the Bill)

4. Currently, the maximum penalties for offences connected with the provision of a false statement or wrong information in relation to registration of an elector or a voter for a LegCo election, a DC election, a CE election, an ECSS election or a RR election are a fine at level 2 (currently \$5,000) and imprisonment for six months. The Bill proposes to increase the maximum penalties for these offences to a fine at level 3 (currently \$10,000) and imprisonment for two years.

Streamlining the voter registration system (Part 3 of the Bill)

5. Generally at present, a decision of an Electoral Registration Officer ("ERO") in relation to registration of an elector or a voter in a LegCo election, a DC election, a CE election, an ECSS election or a RR election may be challenged by way of:

- (a) an appeal (in relation to a decision not to register a replacement or substitute of an authorized representative appointed by a corporate elector or voter);
- (b) a claim (by a person who has been determined to be not eligible to be registered in a relevant register that he or she is entitled to be registered as an elector or a voter); or
- (c) an objection (by a person who considers that a person registered in a relevant register is not eligible to be registered as an elector or a voter).

6. Upon receiving a notice of appeal, claim or objection, ERO is required to deliver the notice to the Revising Officer ("RO") before a statutory deadline. RO must then fix a date, time and place for the hearing of the appeal, claim or objection within a prescribed period and make a determination. RO may require ERO to provide information which RO considers necessary for him or her to make a determination.

7. The Bill seeks to streamline the above mechanism as follows:

- (a) advancing the statutory deadlines for forwarding a notice of claim and a notice of objection by ERO to RO from 2 September to 29 August for a DC election year and from 2 July to 29 June for a year which is not a DC election year;
- (b) empowering RO to dismiss an appeal, a claim or an objection if the appellant or the appellant's representative does not appear at the hearing;
- (c) requiring RO to direct that a claim or an objection be determined without a hearing on the basis of written submissions only if ERO so requests. Such a request would be made if one or more of the specified conditions are met, for example, where the notice of claim or notice of objection concerned does not state any ground on which the claim or objection is made; and

- (d) imposing a duty on a person who makes an appeal, a claim or an objection to provide sufficient information about the appeal, claim or objection concerned to inform RO, ERO and, in relation to an objection, the person in respect of whom the objection is made, of the grounds of the appeal, claim or objection.

8. The Bill also introduces amendments which are similar to those contained in paragraph 7(b) and (d) above in relation to a RR election.

Introducing an exemption from criminal liability for incurring election expenses for publishing election advertisements on the Internet (Part 4 of the Bill)

9. Under section 23(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a person commits an offence if the person, not being a candidate or a candidate's election expense agent, incurs election expenses at or in connection with, among others, any of the elections stated in paragraph 2 above. The maximum penalties for the above offence, as provided in section 22 of Cap. 554, 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.

10. The Bill proposes to amend section 23 of Cap. 554 to provide that if a person publishes an election advertisement on the Internet and the only election expenses incurred for the purpose of publishing the advertisement are either or both of the electricity charges and charges necessary for accessing the Internet, the person would be exempted from criminal liability under section 23(1) of Cap. 554.

Making other technical and miscellaneous amendments to the electoral legislation

Replacing stamping requirement for certain ballot papers (Part 5 of the Bill)

11. Under the current regime in relation to the elections of LegCo, DC, ECSS and RR, the name of, and other information relating to, a deceased or disqualified candidate that are printed on a ballot paper are required to be crossed out by stamping the words "已故" and "DECEASED" or "喪失資格" and "DISQUALIFIED".

12. The Bill seeks to amend the relevant items of electoral legislation to the effect that simply crossing out the name and other information of a deceased or disqualified candidate on a ballot paper would suffice. The Bill also proposes that a notice explaining the crossing out arrangement must be displayed in a prescribed position at a polling station.

Improving the counting process (Part 6 of the Bill)

13. The Bill proposes to improve the counting process in the elections of LegCo, DC, ECSS and CE. The proposed amendments include providing that the following ballot papers would be regarded as invalid, with the votes recorded therein not to be counted:

- (a) a ballot paper for a special functional constituency (i.e. any of the Heung Yee Kuk, the agriculture and fisheries, the insurance and the transport functional constituencies) in a LegCo election which is not marked in accordance with the prescribed requirements, such as not marking with Arabic numerals;
- (b) a ballot paper for a geographical constituency or the District Council (second) functional constituency in a LegCo election on which the vote recorded is for a list and the candidate on the list (or in the case of a multiple candidates list, all the candidates on the list) is a deceased or disqualified candidate;
- (c) a ballot paper in a DC election on which the vote recorded is for a deceased or disqualified candidate;
- (d) a ballot paper in an ECSS election on which the votes recorded outnumber the number of members of the Election Committee to be returned; and
- (e) a ballot paper on which, for a contested CE election, the votes for more than one candidate are recorded, or for an uncontested CE election, both "SUPPORT" and "NOT SUPPORT" votes are recorded.

Other amendments

14. Other amendments proposed to be made by the Bill include:

- (a) in addition to the Returning Officer, conferring on an Assistant Returning Officer for the constituency, subsector or sub-subsector concerned and the Chief Electoral Officer the power to notify the Director of Accounting Services in writing to return or forfeit a deposit lodged for a LegCo election, a DC election or an ECSS election (Part 7 of the Bill);

- (b) broadening the pool of eligible persons to be appointed as RO by the Chief Justice for the purposes of the Legislative Council Ordinance (Cap. 542), the Schedule to the Chief Executive Election Ordinance (Cap. 569) and the Rural Representative Election Ordinance (Cap. 576) respectively by including a former magistrate and a retired magistrate (Part 8 of the Bill); and
- (c) requiring that a notice of appointment of an election expense agent in a CE election or a RR election must state the identity document number of the agent (Part 9 of the Bill).

Commencement

15. Except for the provisions relating to a RR election ("the Relevant Provisions")¹, the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance ("the Gazettal Date"). The Relevant Provisions would come into operation on 1 February 2019, or on the Gazettal Date if such date is later than 1 February 2019.

Public Consultation

16. According to paragraphs 3 and 4 of the LegCo Brief, the Administration conducted a public consultation on enhancement of the voter registration system between 26 November 2015 and 8 January 2016 and following the public consultation, the Administration published the Consultation Report on 21 January 2016. As stated in paragraphs 13 and 14 of the LegCo Brief, the Administration published the Consultation Paper on Review of Electoral Arrangements in November 2017 and issued the Consultation Report in May 2018 regarding the results of the consultation. According to the Administration, some of the proposals contained in the Bill are made after considering the views received.

Consultation with LegCo Panel

17. As advised by the Clerk to the Panel on Constitutional Affairs, the Panel was consulted on the proposed amendments to various items of electoral legislation at its meeting on 21 May 2018. Members in general did not raise objection to the proposals. Some members, however, considered it necessary for the Administration to further clarify the scope of the proposed targeted

¹ The Relevant Provisions are those contained in Division 4 of Part 2, Division 2 of Part 3, Division 4 of Part 5, Division 3 of Part 8, and Subdivision 4 of Division 1, Subdivision 2 of Division 2, Subdivision 2 of Division 3 and Subdivision 3 of Division 4 of Part 9.

exemption from criminal liability under Cap. 554 in respect of a third party who incurred either or both of the electricity charges and Internet access charges in publishing election advertisements on the Internet. Some members also expressed concern about whether the proposed requirement for a person lodging a claim or an objection to provide sufficient information about the case would impose unreasonable burden on the claimant or the objector.

Conclusion

18. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill introduces a number of changes to the electoral arrangements and procedures under the electoral legislation, Members may wish to form a Bills Committee to study the Bill in detail.

Encl.

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3 October 2018

Electoral legislation proposed to be amended by the Bill

1. Electoral Affairs Commission Ordinance (Cap. 541)
2. Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A)
3. Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541B)
4. Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541K)
5. Legislative Council Ordinance (Cap. 542)
6. Chief Executive Election Ordinance (Cap. 569)
7. Registration of Electors (Appeals) Regulation (Cap. 542B)
8. Election Committee (Registration) (Voters for Subsectors) (Members of Election Committee) (Appeals) Regulation (Cap. 569B)
9. Rural Representative Election (Registration of Electors) (Appeals) Regulation (Cap. 576A)
10. Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)
11. Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D)
12. Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F)
13. Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I)
14. Electoral Procedure (Rural Representative Election) Regulation (Cap. 541L)
15. Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J)
16. Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542C)
17. District Councils (Subscribers and Election Deposit for Nomination) Regulation (Cap. 547A)
18. Election Committee (Subscribers and Election Deposit for Nomination) Regulation (Cap. 569C)
19. Rural Representative Election Ordinance (Cap. 576)
20. District Councils Ordinance (Cap. 547)
21. Election Committee (Appeals) Regulation (Cap. 569A)