

立法會
Legislative Council

LC Paper No. CB(2)1391/17-18(04)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 21 May 2018**

Review of electoral arrangements

Purpose

This paper summarizes the discussion of the Panel on Constitutional Affairs ("the Panel") on the Administration's review of electoral arrangements which covers the regulation of election advertisements ("EAs") published through the Internet, the regulation of election surveys, and the polling hours of Legislative Council ("LegCo") and District Council ("DC") elections.

Background

Review of electoral arrangements

2. In October 2017, the Administration informed the Panel that in light of the experiences gained from the various elections in the 2015 to 2017 election cycle, it had commenced a review of various electoral arrangements in preparation for the next election cycle. A consultation paper on review of electoral arrangements ("the Consultation Paper") was issued for public consultation between 13 November and 29 December 2017. The Administration will introduce relevant legislative amendments according to the review outcome. Chapter 5 of the Consultation Paper on "Views Sought" is attached in **Appendix I**.

Regulation of election advertisements published through the Internet

3. Members have all along expressed concern about the regulation of election-related materials published on social networking websites, particularly, whether the expenses for publishing such materials on social networking

websites would be regarded as election expenses, hence subjecting web surfers to inadvertent breach of electoral laws.¹

4. In the Consultation Paper, the Administration recommends a targeted exemption of the criminal liability under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO") in respect of a third party (including individuals and groups, except for the candidates whose election is being promoted or prejudiced and their election expense agents) who incurs electricity and Internet access charges in publishing EAs on the Internet (including social media).

Regulation of election surveys

5. Under the existing regulatory framework, the Electoral Affairs Commission ("EAC") has promulgated guidelines in relation to the conduct, publication and broadcast of exit polls conducted within No Canvassing Zones ("the Guidelines") to avoid unfair interference with the election process by unduly influencing electors. Since the 2015 DC Ordinary Election, EAC has required applicants or the applicant organizations for conducting exit polls to make a statutory declaration to abide by the relevant terms and the Guidelines on the conduct of exit poll. Failure to comply with the terms of the statutory declaration or requirements of the Guidelines could result in revocation of the approval for the conduct of exit poll, censure or even reprimand by EAC in a public statement. If applicants or applicant organizations knowingly make a false statement on a material particular in the statutory declaration, they may be subject to criminal liability. As for election surveys conducted outside of the No Canvassing Zones on the polling day, and those conducted through different channels (e.g. by phone, on the Internet) prior to the polling day, there is currently no regulation under the existing legislation or the Guidelines.

6. According to the Administration, various election surveys were conducted in the 2016 LegCo General Election by different organizations on or before the polling day with announcement of the survey results. There were media reports that some people intended to use the results of such surveys for the matching of votes. In view of public concern on various types of election surveys, EAC considers that the community should explore how this issue should be handled in future public elections.

¹ Under ECICO, election expenses can only be incurred by a candidate and his/her election expense agents, 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, commits an offence and is liable upon conviction to a fine of \$200,000 and imprisonment for three years.

7. The issues raised by the Administration in relation to the regulation of election surveys for public consultation are set out paragraph 5.02 (a) – (c) in Appendix I.

Polling hours

8. The polling hours for both DC and LegCo elections are from 7:30 am to 10:30 pm, which have been in force since the First LegCo election in 1998 and the first-term DC election in 1999. Some LegCo Members have expressed the view that the poll running for 15 hours is too long, and proposed advancing the closing time of the poll, thereby shortening the polling hours. At the meeting on 17 July 2017, the Administration consulted the Panel on, among others, shortening the polling hours. Whether the current polling hours should be shortened is one of the issue covered in the Consultation Paper for consideration by the public.

Relevant discussion of the Panel

9. The Panel discussed the Consultation Paper at its meeting on 20 November 2017 and received public views at its special meeting on 20 December 2017. The major views and concerns expressed by members are summarized in ensuing paragraphs.

Regulation of election advertisements published through the Internet

10. Members in general expressed support in principle for the proposed targeted exemption as detailed in paragraph 4 above. Some members questioned whether the exemption covered publishing online a large volume of posts expressing a clear stance in support of a particular candidate, and whether a person who was a member of an electioneering team publishing EAs on the Internet would also be regarded as "a third party" under the proposal.

11. The Administration explained that under the existing regulatory framework, if a web surfer published any form of publication on the Internet for the purpose of promoting or prejudicing the election of a candidate or candidates, such publication would be regarded as EAs. The expenses incurred, however trivial, would still be regarded as election expenses and hence could subject the web surfer to criminal liability of illegally incurring election expenses. The proposed relaxation aimed to address cases of inadvertent breach resulting from a mere expression of views by third party web surfers who incurred merely electricity and Internet charges, without exempting

web surfers who had incurred election expenses such as the cost of setting up and designing online platforms for promoting the election of a candidate. It 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. In response to members' enquiry, the Administration advised that the costs of paid-for publicity on social media (e.g. sponsored posts on Facebook) would not be exempted under the proposal.

12. Some members suggested that the Administration should require a third party publishing EAs on the Internet to disclose to EAC his/her identity (e.g. name) in order to prevent anonymous vilification against individual candidates during elections. These members requested the Administration to make reference to the relevant legislation in Australia, Canada, New Zealand and Singapore in this regard. The Administration agreed to consider the suggestion.

Regulation of election surveys

13. Some members expressed concern about the possible use of exit poll results by political parties to plan their electioneering activities before the close of poll. They enquired about the measures adopted by the Administration in ensuring that the organizations approved to conduct exit polls would comply with the Guidelines promulgated by EAC, with a view to preventing early disclosure of the exit poll results to affect election results.

14. The Administration advised that since the 2015 DC Ordinary Election, EAC had required applicants or the applicant organizations for conducting exit polls to make a statutory declaration to abide by the relevant terms and the Guidelines on the conduct of exit poll, including to undertake not to announce or disclose the results of the exit poll before the close of poll. If applicants/applicant organizations knowingly made a false statement on a material particular in the statutory declaration, they might be subject to criminal liability.

15. Some members expressed concern that, in practice, it would be difficult if not impossible for the Administration to monitor whether or not the applicants/applicant organizations conducting exit polls complied with the relevant terms of the statutory declaration and the Guidelines, because the persons/organizations concerned might disclose the exit poll results in secret. The Administration advised that it had not received any report of suspected cases of non-compliance with the terms of the statutory declaration and the Guidelines since the introduction of the statutory declaration in 2015. The

Administration called on members that if anyone had knowledge of any such cases, he/she should report them to law enforcement authorities for investigation and follow-up actions.

16. Dr Hon CHENG Chung-tai took the view that the Administration should make reference to the relevant regulation of election survey in New Zealand and consider introducing a cooling-off period on the polling day until the close of poll. He considered that such arrangements would be effective in ensuring a level playing field for all the candidates running in an election and avoid the situation in which candidates with abundant resources were able to unduly influence electors' choice by conducting large-scale publicity campaign on the polling day. Some other members, however, questioned whether it would be practicably feasible to prohibit the conduct of canvassing activities on the Internet or by phone during the cooling-off period. Some members also took the view that that it was unnecessary to regulate the conduct of election surveys before the polling day as they did not see how these surveys would affect the electors. The Administration advised that it did not have any preconceived position and welcomed members' views for further consideration.

17. Some members expressed the view that as the conduct of the "ThunderGo" campaign and the "abandonment of election" by certain candidates during the 2016 LegCo General Election were closely intertwined, it would not suffice to regulate only election surveys but not acts related to the "abandonment of election". They considered that the acts of "abandonment of election" would affect the fairness and impartiality of the election and suggested that such acts should be properly regulated. They also criticized that some newspapers had wide coverage of the "ThunderGo" campaign during the 2016 LegCo General Election with a view to promoting the campaign. The Administration explained that there was no mechanism for withdrawal of candidature after the close of nomination under the existing legislation, and the Administration would examine whether and how best to address the issue of "abandonment of election". The Administration advised that concrete views on this issue were welcome and it would decide the next step in light of the views received.

Polling hours

18. Some members opposed shortening the polling hours for DC and LegCo elections as this might have an impact on the voter turnout and affect those electors who needed to work on the polling day. Dr Hon KWOK Ka-ki suggested that the Administration should consider designating the polling day as a statutory holiday in order to encourage registered voters to vote. Some other members, however, considered that the present polling hours (15 hours) were

rather long. In their view, shortening the polling hours would enable REO to hand back the venues of the polling stations as early as possible on the day after the polling day, which was important especially for polling stations that were set up in schools. They considered that it would not be too difficult for electors to get used to the new arrangements if the polling hours were slightly shortened, say, by half an hour.

19. The Administration advised that it would carefully consider all the views and suggestions received in the consultation exercise. If the community reached a consensus on the matter, the Administration would relay the relevant proposal to EAC for consideration.

Latest development

20. The Administration will brief the Panel on the Consultation Report on Review of Electoral Arrangements and the proposed amendments to the electoral legislation at the next meeting on 21 May 2018.

Relevant papers

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

Chapter 5: Views Sought

Views Sought

- 5.01 We welcome views from the public on various electoral arrangements. Your views and comments will be taken into account when the Government conducts relevant reviews.
- 5.02 Specifically, we would like to mainly seek the community's views on the following:

Regulation of EAs published through the Internet (including social media)

- (a) Under the premises of upholding the fairness and impartiality of elections and safeguarding the freedom enjoyed by the public in their daily expression of views on the Internet (including social media), may consideration be given to provide an exemption in the legislation, such that a third party (i.e., individuals or groups that are neither the relevant candidates whose elections are promoted or prejudiced nor their election expense agents) can be exempted from the criminal liability arising from incurring election expenses as a result of expression of views on the Internet (including social media) that constitutes an EA?
- (b) Should the types of election expenses eligible for the above exemption be restricted to electricity and Internet access charges?

Regulation of Election Surveys

- (a) Whether election surveys (including those on electors' voting preference and choice) conducted outside the NCZs on the polling day should be regulated? Specifically, whether the announcement or disclosure of such survey results, or the making of specific remarks or predictions on the performance of individual candidates should be prohibited before the close of poll?

- (b) Whether and to what extent election surveys on electors' voting preference conducted prior to the polling day should be regulated? Specifically, whether the announcement or disclosure of such survey results or the making of specific remarks or predictions on the performance of individual candidates should be prohibited on or prior to the polling day?
- (c) Whether any change should be made to the existing regulation on exit polls on the polling day?

Polling Hours

- (a) Whether the current polling hours should be shortened?
- (b) If the polling hours are to be shortened, whether only the closing time of the poll be advanced, only the starting time of the poll be postponed, or both the starting and closing time of the poll be respectively postponed and advanced at the same time?
- (c) If the polling hours are to be shortened, for how long should it be shortened?

Appendix II

Relevant documents on review of electoral arrangements

Committee	Date of meeting	Paper
Legislative Council	1.6.2016	Official Record of Proceedings Pages 126 – 130 (Written question)
	29.6.2016	Official Record of Proceedings Pages 60 – 68 (Oral question)
	2.11.2016	Official Record of Proceedings Pages 90 – 92 (Written question)
Panel on Constitutional Affairs	19.12.2016 (Item IV)	Agenda Minutes
	17.7.2017 (Item III)	Agenda Minutes
	16.10.2017 (Item III)	Agenda Minutes
	20.11.2017 (Item III)	Agenda Minutes
	20.12.2017 (Item I)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
16 May 2018