

立法會
Legislative Council

LC Paper No. CB(2)676/19-20(04)

Ref : CB2/PL/CA

Panel on Constitutional Affairs
Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 March 2020

Electoral Affairs Commission Report on the
2019 District Council Ordinary Election

Purpose

This paper provides background information on the Electoral Affairs Commission ("EAC") Report on the 2019 District Council ("DC") Ordinary Election and gives a brief account of the past discussions held by the Panel on Constitutional Affairs ("the Panel") on issues relating to the 2019 DC Ordinary Election.

Background

2. EAC is a statutory and independent body responsible for the conduct and supervision of elections. In accordance with section 8 of the EAC Ordinance (Cap. 541), EAC shall make a report to the Chief Executive ("CE"), within three months after the election, on matters relating to that election in respect of which the Commission has any function under the Ordinance or any other Ordinance. The report will contain a review of relevant electoral arrangements and improvement measures for future elections.

3. The 2019 DC Ordinary Election was held on 24 November 2019. Accordingly, EAC submitted the Report on the 2019 DC Ordinary Election to CE on 24 February 2020. The Report was published on 10 March 2020.

Relevant discussions of the Panel

4. The Administration briefed the Panel on the publicity programme for the 2019 DC Ordinary Election at the meeting on 18 March 2019. The Panel also discussed issues relating to the 2019 DC Ordinary Election at its policy briefing cum meeting on 16 December 2019. The major issues raised at these meetings are summarized in the following paragraphs.

Polling and counting arrangements

5. At the policy briefing cum meeting on 16 December 2019, some members expressed grave concern that some registered electors were unable to exercise their voting rights in the 2019 DC Ordinary Election because their particulars had already been crossed out in the poll register and they were issued only with a "tendered" ballot paper which would not be counted. The Administration was requested to follow up and take effective measures to prevent the recurrence of similar incidents. Members also relayed some electors' complaints that they were unable to see whether their particulars on the poll register had really been crossed out after they had been issued with a ballot paper. These members asked whether the Administration would consider video-recording the process of verifying electors' identity so as to guard against fraudulent acts and enhance the public's confidence in the credibility of the election.

6. The Administration advised that according to the records of the Registration and Electoral Office ("REO"), a total of 98 "tendered" ballot papers were issued on the polling day. The number was small as compared with the total number of ballot papers issued which were close to three million. Nevertheless, the Administration undertook that REO would follow up and look into the aforementioned incidents. As regards the suggestion of installing closed-circuit televisions in polling stations to monitor the polling process, the Administration took the view that the suggestion had to be considered prudently given the privacy issues involved. Nevertheless, the Administration agreed to examine whether the transparency of the process of verifying electors' identity could be enhanced without compromising the privacy of individual electors.

7. Some members also expressed concern that due to overcrowding at counting stations after the close of poll, many candidates' agents and staff were unable to monitor the counting of votes. They asked whether the Administration would consider video-recording the vote counting process. The Administration explained that the existing counting arrangements were conducted in an open and transparent manner under the scrutiny of candidates and their agents, members of the public and reporters. That said, the Administration would review the arrangements with a view to making improvements in future elections.

Adopting modern technology in the voting process

8. Some members took the view that the existing arrangements, under which verification of electors' identity, issuance of ballot papers and making of relevant records on the poll register were all conducted manually, did not keep pace with the development of modern technology and were error-prone. They

urged the Administration to make use of electronic devices to facilitate the voting process. It was suggested that electors could be required to insert their smart identity cards into relevant electronic facilities to be installed at the polling stations for identity verification.

9. The Administration advised that it was open-minded to members' suggestions. Besides, after consulting the Panel in the 2018-2019 legislative session, the Administration aimed to conduct a demonstration of electronic counting in some traditional functional constituencies in the upcoming 2020 Legislative Council General Election. The Administration further advised that REO was exploring the use of an electronic poll register with a view to enhancing the efficiency when issuing ballot papers.

Polling staff

10. Some members enquired about the number of polling staff who were recruited on temporary terms for the 2019 DC Ordinary Election. They also enquired about the measures in place to ensure that the polling staff would uphold the principles of political neutrality and impartiality in discharging their duties.

11. The Administration advised that as in previous elections, more than 20 000 civil servants had been recruited to serve as polling staff for the 2019 DC Ordinary Election. According to the existing mechanism, REO would, as far as possible, avoid deploying polling staff to work in the polling station where they would cast their votes. REO would also require each polling staff member to disclose if he/she had any close relationship with any candidates, and if so, he/she would not be assigned to work at the polling stations concerned.

Measures to facilitate for electors with special needs

12. Some members raised concern that some people queued up repeatedly outside polling stations on the polling day of the 2019 DC Ordinary Election. As a result, many electors, including elderly persons and persons with mobility difficulties, had to wait for hours to cast their votes. These members requested the Administration to introduce facilitation measures for these vulnerable electors in future elections. In these members' view, the Administration should arrange a dedicated queue for these electors to obtain the ballot papers and cast their votes at each polling station.

13. The Administration explained that as the cumulative voter turnout rate of the 2019 DC Ordinary Election reached a record high of 71.2 per cent, queues were observed in a number of polling stations. Nevertheless, the

Administration would review the polling arrangements and the operational guidelines to identify room for improvements in future elections. The suggestion of designating a dedicated queue for electors with special needs would also be explored.

Publicity programme for the 2019 District Council Ordinary Election

14. During discussion of the publicity programme for the 2019 DC Ordinary Election, some members expressed concern that the budget of about \$7.5 million for the publicity programme for the 2019 DC Ordinary Election might not be adequate to achieve effective publicity purpose. They sought details of the Administration's measures (including those involving the use of online channels) to boost the turnout rates in public elections.

15. The Administration explained that the proposed expenditure for the publicity programme had been increased from \$6.9 million in 2015 to about \$7.5 million taking into account inflation. Moreover, in devising the proposed publicity programme, the Administration had made reference to the experience of the 2015 DC Ordinary Election. The Administration also advised that it planned to step up publicity efforts through various online channels, e.g. mobile applications. For the 2015 DC Ordinary Election, advertisements were also placed on online platforms such as Yahoo and OpenRice.

16. Some members urged the Administration to step up enforcement actions as well as publicity efforts to publicize the importance of honest and clean elections and combat vote-rigging. The Administration advised that the first phase of the publicity programme would focus on the promotion of the importance of honest and clean elections. To this end, REO would collaborate with relevant departments and law enforcement agencies. In addition, REO would step up publicity during the 2019 Voter Registration Campaign to promote the importance of providing true and accurate information for registration and remind registered electors to update their residential addresses.

Right to stand for election

17. Some members took the view that in order to encourage people to stand for election, the Administration should set out clearly the eligibility criteria to stand for the election and the impact of signing/not signing the Confirmation Form in determining the validity of nominations.

18. The Administration stressed that the right to stand for election was a fundamental right enshrined in the Basic Law. The Confirmation Form was prepared by EAC to facilitate the Returning Officers' ("ROs") discharge of their duties under the nomination procedure to ensure that all candidates fully

understood the legal requirements, and on such basis, were bona fide when signing the declaration in the nomination form. ROs would exercise their statutory power to process all nominations in accordance with the legal requirements and relevant procedures. Depending on the actual circumstances of each case, ROs might seek legal advice and according to the law request the candidate to provide additional information that they considered necessary. Any person seeking candidature who did not agree with RO's decision might lodge an election petition in accordance with the law.

Relevant Legislative Council question

19. At the Council meeting of 18 December 2019, Hon Elizabeth QUAT raised an oral question on "Conducting elections in a fair and just manner". The question and the Administration's reply are in **Appendix I**.

Latest development

20. The Panel will discuss the EAC Report on the 2019 DC Ordinary Election at the next meeting on 16 March 2020.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
12 March 2020

Appendix I**Press Releases**

LCQ6: Conducting elections in fair and just manner

Following is a question by the Hon Elizabeth Quat and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Patrick Nip, in the Legislative Council today (December 18):

Question:

The District Council (DC) Ordinary Election was held on the 24th of last month. The Electoral Affairs Commission received 7 460 relevant complaints, about 2 000 of which involved voting arrangements. Some members of the public have expressed worries that similar problems may occur in the Legislative Council General Election to be held next year. On ensuring that elections be conducted in a fair and just manner, will the Government inform this Council:

(1) as a number of electors claimed that upon their arrival at the ballot paper issuing desk in the polling station for the first time on the polling day of the aforesaid DC election, they were informed that the particulars registered in respect of their names on the Register of Electors had been crossed out (i.e. indicating that they had been issued with a ballot paper earlier), and they were therefore issued only with a "tendered" ballot paper which would not be counted, rendering them unable to exercise their voting rights, whether the Government had taken measures to guard against this situation before the election was held; if so, why such situation still occurred; of the new measures put in place to prevent the recurrence of such situation in the next election;

(2) as it has been reported that in response to calls on the Internet, some people queued up repeatedly outside polling stations on the polling day of the aforesaid DC election, so as to create long queues to deter electors from casting their votes, resulting in some people who were in a hurry as well as frail elderly persons and persons with disabilities who were unable to

wait for a long time giving up voting, whether the law enforcement agencies have looked into this situation; if so, of the details; if not, the reasons for that; of the new measures put in place to prevent the recurrence of such situation in the next election; and

(3) as the current voting procedure comprises entirely manual operations (including verifying the identity of electors, issuing ballot papers and recording that on the Register of Electors, voting by using a stamp, and counting votes), which is error-prone and vulnerable to fraudulent acts, whether the Government will use electronic voting in the next election; if so, of the details; if not, the reasons for that?

Reply:

Mr President,

My reply to the Hon Elizabeth Quat's question is as follows:

The sixth term District Council Ordinary Election (the Election) was held on November 24 this year. With the number of electors and voter turnout reaching a record high, a total of 452 District Council Members were elected. Held in the midst of instability in society, the Election had faced unprecedented challenges. Competition was fierce like never before as none of the some 400 constituencies were uncontested. We saw a lot of irresponsible speech and behaviour that disregarded the fairness of the Election during the process. For instance, public appeals were made to confiscate the identity cards of the elderly, some candidates were threatened during the canvassing activities while others were targeted by petrol bombs. There were also incidents involving damages and arson of candidates' offices. Some even spread rumours that the Election had been cancelled or rescheduled. Notwithstanding this, the polling and counting of the Election was concluded in an open and transparent manner and was overall peaceful and orderly under the scrutiny of candidates and the public.

The EAC will refer complaints on alleged infringement of the law to relevant law enforcement agencies. We understand that

relevant law enforcement agencies have been following-up on the reports or complaint cases involving suspected breach of law. Besides, if candidates or electors think that the Election is interfered by corrupt or illegal conduct, or there is a material irregularity in relation to the Election, they may lodge election petitions to question the result of the Election under Section 49 and 50 of the District Council Ordinance, which will be determined by the court. The results of an election can be challenged on the various grounds, including:

- (1) corrupt or illegal conduct was engaged in by or in respect of the elected person at or in connection with the election; or
- (2) corrupt or illegal conduct was generally prevalent at or in connection with the election; or
- (3) material irregularity occurred in relation to the election, or to the polling or counting of votes at the election.

For this Election, the deadline for lodging election petitions is January 29 next year. As of today, one person has lodged an election petition.

(1) For the statutory procedures of issuing ballot papers, only registered electors whose names appear on the 2019 final register (FR) of electors may vote at the 2019 District Council Ordinary Election. After an elector has arrived at a designated polling station, pursuant to the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (the Regulation), the electoral staff would inspect at the ballot paper issuing desk the original of the elector's Hong Kong Permanent Identity Card or other identity documents permitted by the legislation (such as the HKSAR Passport), and give a ballot paper to the elector if the staff is satisfied about the elector's identity. A line must be placed in the register of electors to cross out the name and number of identity documents of the elector concerned in order to denote that the ballot paper has been issued to the elector.

Pursuant to the Regulation, the Presiding

Officer (PRO) may, at the time a person applies for a ballot paper, ask the person to confirm his/ her identity and that he/ she has not voted in the Election, and may give a ballot paper to him/ her only upon the PRO's satisfaction of the answer provided. Candidates, their election or polling agents observing in the polling station(s) may request the PRO to ask the above questions.

Pursuant to section 60 of the Regulation, if the register shows that a person has already been issued with a ballot paper when that person applies for a ballot paper, and if the PRO is not certain whether the same person has been issued with a ballot paper earlier, the PRO must issue to that person a ballot paper endorsed on the front of it with the words "重複" and "TENDERED". "TENDERED" ballot papers are not to be counted, but if there is any dispute after the conclusion of the election, that ballot paper can be admitted as evidence in election petitions. As of December 13, the EAC has received 16 complaints in relation to the issuance of "TENDERED" ballot papers.

In accordance with section 15 of the Elections (Corrupt and Illegal Conduct) Ordinance (the ECICO), applying for a ballot paper in the name of another person, or, having voted at the Election, applying at the same Election for a ballot paper in the person's own name is liable on conviction to a fine of \$500,000 and to imprisonment for seven years.

(2) For the queuing arrangements for obtaining a ballot paper on the polling day, pursuant to the Regulation, when an elector is issued with a ballot paper, he/ she must immediately go into a voting compartment and mark the ballot paper without undue delay, and must leave the polling station as soon as he/ she has put the ballot paper into the ballot box. If an elector intentionally makes repeated requests for a ballot paper in order to obstruct the poll, the PRO may decline his/ her requests. If the PRO considers that the elector has voted at the Election and applies at the same Election for a ballot paper in his/ her own name, the PRO may request a police officer to arrest the person concerned, pursuant to the Regulation. Pursuant to the ECICO, a person engages in corrupt conduct

at the Election if the person, by a deception, obstructs or prevents another person from voting at the Election. Pursuant to the ECICO, such person is liable on conviction to a fine of \$500,000 and to imprisonment for seven years.

The cumulative voter turnout rate of this term's District Council election had reached a record high of 71.2 per cent, and close to three million voters had casted their votes. In the first three hours after the commencement of the poll, a total of 720 000 voters had already casted their votes, which was three times the figures of the last election. Queues appeared in many polling stations. We note that crowd control arrangements were implemented at many polling stations to flexibly handle the long queues of electors on the polling day. The very large scale of the Election also meant that we had to set up more than 610 polling stations, as well as recruit over 20 000 electoral staff and deploy more than 10 000 staff from the Hong Kong Police Force, Fire Services Department, Civil Aid Service, etc. to provide support on the polling day. We will review the polling arrangements, recruitment and training of electoral staff, as well as the operational guidelines, etc., with a view to identifying areas with room for improvement. The EAC must, within three months of the conclusion of the Election, submit a report to the Chief Executive to review the electoral arrangements, including its preparatory work, polling and counting arrangements, publicity, etc., and make recommendations. At the same time, the Constitutional and Mainland Affairs Bureau will seriously review the experience of the Election with Registration and Electoral Office (REO) to enhance the electoral arrangements of the Legislative Council General Election next year.

(3) On the issue of using technology, we have been proactively studying ways to electronise different stages of the election throughout the years. However, we must strike a balance among the need of using technologies, efficiency, security risks, privacy protection and public trust, etc. before introducing any arrangements. While we had consulted the Legislative Council (LegCo) on some of the proposals in the past, such proposals could not be implemented in the end due to the diverse views received.

The direction of electronisation mainly involves three aspects, namely issuing ballot papers in an electronic manner, electronic voting as well as electronic counting. In relation to the issuance of ballot papers, under the existing arrangements, REO arranges for two electoral staff to issue ballot papers together, in order to minimise human error and ensure that the election is conducted in an honest and fair manner. REO is now studying the use of an electronic poll register, with a view to increasing the efficiency and accuracy when issuing ballot papers.

As for electronic voting, we have looked into the experiences of overseas countries/regions, and found that a number of issues are encountered in adopting electronic voting, including the system being hacked leading to the election result being affected, disruption of voting due to malfunctioning of electronic voting devices, high cost incurred in procuring electronic voting devices, limited useful life of the devices which will soon become outdated etc. From the perspective of risk management, information security and cost-effectiveness, etc., we consider that such problems must be properly resolved before electronic voting can be introduced. There must also be sufficient discussion in the community in deciding whether trade-offs are to be made.

In relation to electronic counting, we have already consulted the LegCo Panel on Constitutional Affairs earlier. It is our target to conduct a demonstration in some traditional functional constituencies with fewer number of electors in the LegCo election to be held next year.

Thank you, President.

Ends/Wednesday, December 18, 2019
Issued at HKT 16:18

NNNN

Appendix II

Relevant documents on Electoral Affairs Commission Report on the 2019 District Council Ordinary Election

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	18.3.2019 (Item III)	Agenda Minutes
	-	Administration's paper on practical arrangements for the 2019 District Council Ordinary Election (issued on 11 June 2019) Guidelines on Election-related Activities in respect of the District Council Election (issued on 6 September 2019) Administration's supplementary note on practical arrangements for the 2019 District Council Ordinary Election (issued on 24 October 2019)
	16.12.2019 (Item IV)	Agenda
Legislative Council	18.12.2019	Official Record of Proceedings (Pages 63 to 73)

Council Business Division 2
Legislative Council Secretariat
12 March 2020