

Our Ref.: CAB C5/7/5
Your Ref.: LS/S/2/01-02

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29 October 2001
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Dear Mr Stephen,

**Electoral Affairs Commission (Electoral Procedure)
(Election Committee) Regulation (L.N. 210)**

Thank you for your letter dated 18 October 2001. After consulting our colleagues in the Department of Justice and the Registration and Electoral Office, we set out in the following paragraphs our replies to your questions.

General observation

Q1: It would be helpful to members of the Subcommittee in scrutinising the Regulation if the Administration could supply a comparison table on the differences and similarities between the provisions of the Regulation and the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg.).

A1: The comparison table is attached to our letter dated 29 October 2001.

Section 19(2)

Q2: Is the “separate notice” under the provision the same “separate notice” referred to in section 18 of the Regulation? If yes, should that be qualified by reference to section 18?

A2: The “separate notice” appeared in section 19(2) is not the “separate notice” referred to in section 18. You may wish to note that the “separate notices” in section 18(3) means the notices to be published for each of the subsectors, which set out the particulars of validly nominated candidates in a particular subsector.

Section 22(2) & (3)

Q3: Why is it necessary to have a separate notice?

Q3: Declarations under section 20(3)(a) or 21(3)(a) of the Regulation would be made *only if* the concerned candidate has died or is disqualified after the Returning Officer has published a notice under section 22(2) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) (“the Ordinance”) stating the persons who are validly nominated as candidates for the relevant subsector. In other words, if the death or disqualification happens before the publication of the notice under section 22(2) of the Schedule to the Ordinance, no declarations will be made under section 20(3)(a) or 21(3)(a) of the Regulation. In that case, the Returning Officer would have to declare in a separate notice the relevant circumstance described in section 25 of the Schedule to the Ordinance in order to fulfil the obligation imposed by that section.

Section 42(5)

Q4: Why is it necessary to have the reference “to reach that Officer”? Section 42(7) has already provided that the appointment of a polling agent is not effective until notice of the appointment is received by the Chief Electoral Officer or the Presiding Officer.

A4: There may be a situation where the candidate gives notice to the Chief Electoral Officer (“CEO”) 1 week before the polling day but the notice does not reach the CEO until say, 5 days before the polling day. The reference in question makes it clear that no such notices will be accepted by the CEO.

Section 42(9)

Q5: Would it be appropriate to add “in accordance with (11)” after “the Presiding Officer”?

A5: The question as to when a notice of revocation should be given to the CEO and when to the Presiding Officer is governed by subsection (11). Even without the proposed amendment, the requirement with which a candidate has to comply in filing the notice of revocation is clear when subsections (9) and (11) are read together. We therefore consider that it is not necessary to make any changes to subsection (11).

Section 46(2)

Q6: Would it be appropriate to add “or its vicinity” after “at a polling station”?

A6: We do not consider it necessary to add “its vicinity” after “at polling station” as the relevant situation would be covered by section 41 which is concerned about the order in no canvassing zone and no staying zone. In other words, if a person misconducts himself or herself or fails to obey a lawful order of the Returning Officer or the Presiding Officer in the vicinity of the polling station (i.e. the no canvassing zone or the no staying zone), he or she can be removed under section 41.

Section 55(2)

Q7: Could the Administration give examples as to the circumstances in which the Presiding Officer will grant permission to the voter or authorized representative to return to cast vote?

A7: Section 55 is proposed by the Electoral Affairs Commission having regard to the experiences in the 2000 Legislative Council elections. In that election, an elector who had been issued a ballot paper did not cast her vote as she wished to make a phone call to obtain more information on the candidates. The elector left the polling station and returned later to claim for another ballot paper. This situation gave rise to dispute between the elector concerned and the polling staff. The new section 55 is to give clear guidelines to the polling staff and to better protect the voting rights of individual electors.

Section 55(6)

Q8: It appears that the Presiding Officer has no discretion to refuse a request made under the provision. If that is the case, would it be appropriate to replace “becomes incapacitated” by “claims incapacitated” in paragraph (b)?

A8: The Presiding Officer may withhold his permission if he is of the opinion that the request is a manifest abuse of the facilities provided by this section (please refer to section 55(3)). It would therefore be inappropriate to replace “becomes incapacitated” by “claims incapacitated”. Moreover, if an elector collapses after having been issued with a ballot paper, he will not be able to “claim” his incapacity or make a request to return to the polling station before the close of the poll under section 55(1).

Section 61

Q9: The provision is modelled upon section 56 of Schedule 1 to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation. Why section 56(3) of Schedule 1 is omitted in the provision?

A9: In order to speed up the process of preparing sealed packets after the close of poll, the requirement that the Presiding Officer should make separate sealed packets for *each subsector* is omitted from the new Regulation. As a matter of fact, such a change is introduced in the light of the experiences in the 2000 Legislative Council elections. In the case of subsector ordinary elections, Presiding Officers may have to handle ballot papers of up to 35 subsectors and it takes time for the polling staff to prepare separate sealed packets for all the subsectors.

Yours sincerely,

(Ms Doris HO)
for Secretary for Constitutional Affairs

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