

LS/S/6/01-02
2869 9468
2877 5029

Secretary for Constitutional Affairs
(Attn : Mr Chris Sun, AS(CA)5A)
Constitutional Affairs Bureau
3/F, Main and East Wings
Central Government Offices
Central
Hong Kong

16 November 2001

BY FAX
Fax No. : 2840 1976
Total no. of page(s) : 6

Dear Chris,

Electoral Procedure (Chief Executive Election) Regulation (L.N. 233)

We are scrutinizing the legal and drafting aspects of the above Regulation. We have the following comments on the Regulation.

Section 2(1)

In the definition of “election expenses”, is it necessary to add “but the reference to an election in that meaning is to be construed as a reference to an election defined in this section” (c.f. the definition of “election expenses” under section 1(1) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (L.N. 210 of 2001) (“EAC(EP)(EC)Regulation”))?

In the definition of “identity document”, is it necessary to add “or” after paragraph (b)?

In the definition of “ordinary business hours”, is it necessary to replace “hour” by “hours” (c.f. the definition of “ordinary business hours” under section 1(1) of the EAC(EP)(EC)Regulation)?

Section 2(2)(c)

Is the reference to “paragraph (a) or (b)” of section 14 ambiguous?

Section 4(1)(b)(iii)

Should “be” be replaced by “being”?

Section 4(1)(c), (1)(d)(ii) and (2)

Would you explain the reason for adopting “identity card” instead of “identity document” as used in section 8 of the EAC(EP)(EC)Regulation?

Section 18(2)(b) and (3)

Is the scope of “other premises” equivalent to that of section 28(2)(b) of the EAC(EP)(EC)Regulation which also includes “structure” and “place”, and intended to cover those premises set out under section 28(2)(c)-(e) of the EAC(EP)(EC)Regulation?

Special polling station

Under section 18, the Chief Electoral Officer shall designate a place as the polling station and counting station. However, unlike sections 29 and 33 of the EAC(EP)(EC)Regulation and sections 29 and 33 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (“EAC(EP)(LC)Regulation”)(Cap. 541 sub. leg.), there is no provision in the Regulation for special polling stations to be used for voting by persons with a disability. Is there any arrangement for persons with a disability to vote in the CE election?

Section 24(2)(b)

What is the policy reason for adding “without lawful authority” in the provision?

Section 24(2)(d)

It is noted that the wording of the provision is different from similar provision in section 41(1)(d) of the EAC(EP)(EC)Regulation and section 41(1)(ca) of the EAC(EP)(LC) Regulation. It is appreciate that new arrangement is necessary consequential to section 16(7) of the Chief Executive Election Ordinance. Could you give examples as to display of propaganda material in the no canvassing zone that will be considered with reasonable excuse under the new arrangement?

Section 24(4)(c)

Would it be appropriate to define what misconduct is (c.f. section 41(6) of the EAC(EP)(EC)Regulation)?

Section 26(3)

Could you give examples where a person will be authorized to enter and stay in the polling station?

Section 27(3)(i)

Could you give examples where a person will be authorized by the Chief Electoral Officer or a member of the Electoral Affairs Commission to do an act prohibited by subsection (2)?

Section 27(5)(b)

Could you give examples where display of propaganda material in the polling station on the polling date that will be considered with reasonable excuse?

Section 27(7)(d)

Would it be appropriate to define what misconduct is (c.f. section 41(6) of the EAC(EP)(EC)Regulation)?

Section 35(3)(b) and (6)

Section 30(2)(c) provides that the Electoral Affairs Commission ("EAC") may decide to have ballot papers to be used in different rounds of voting printed in different colours. Would it be appropriate to provide for the circumstance in which an elector is re-issued the original ballot paper but its colour is different from the colour of the ballot papers to be used for the particular round of voting upon his return?

Section 35(5)(c)(i)

Who is supposed to return the ballot paper?

Section 40(2)(b)

Would it be appropriate to add "in" before "subsection (1)(a) or (b)"?

Section 46(2)

Could you give examples where a person will be authorized to enter and stay in the counting station?

Section 47(3)(b)

Could you give examples as to display of propaganda material in the counting station that will be considered with reasonable excuse?

Section 47(3)(e)

Would it be appropriate to define what misconduct is?

Section 58

It is noted that in section 87 of the EAC(EP)(LC)Regulation and section 84 of the EAC(EP)(EC)Regulation, the reference is "criminal proceedings" instead of "other legal proceedings". Could you explain the reason for adopting a different reference in section 58? A consequential reference is also found in section 59(b).

Section 60(3)

Should the reference be "as if they are ballot papers and documents sent to the Chief Electoral Officer under section 57" instead of "as if they are ballot papers and documents sent to the Returning Officer under section 57" (emphasis added)?

Section 61

Is it appropriate to add "further occurrence, i.e. "riot, open violence or other occurrence of public danger", to be the ground for the EAC to postpone or adjourn a poll or the counting of the votes in respect of a poll (as the case may be) (c.f. sections 1 and 2 of Schedule 1 to EAC(EP)(EC)Regulation)?

Section 63(3)

In comparing to section 5(3) of Schedule 2 to the EAC(EP)(LC)Regulation, what is the reason for omitting the arrangement for deposit of the items in a building other than that mentioned in section 63(3)(a)-(c)?

Section 64(b)

In comparing to section 6(2) of Schedule 2 to the EAC(EP)(LC)Regulation, what is the reason for omitting the arrangement for deposit the ballot box, etc. in a building other than that mentioned in section 64(b)(i)-(iii)?

Section 69(2)(e)

It appears that a person who stays in the counting station under section 46(3) is not required to be "authorized".

Section 81(1)(a)

Are you satisfied that the EAC does not have power to exempt any other class or type of election advertisement from the application of subsection (1)(a) (c.f. section 102(16) of the EAC(EP)(LC)Regulation)?

Section 84(6)

Are you satisfied that the reference to "authorization" is omitted (c.f. section 103(4) of the EAC(EP)(LC)Regulation)?

Your reply, in both languages, to reach us by 19 November 2001 is very much appreciated.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. Mr Jimmy Ma, LA
Mrs Percy Ma, CAS(2)3
Miss Kitty Cheng, ALA(Temp)