

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2006

Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) (Amendment) Regulation 2006

Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006

INTRODUCTION

On 15 May 2006, the Electoral Affairs Commission (“EAC”) made the following Regulations:

- (a) the EAC (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) (Amendment) Regulation 2006 (“Amendment Regulation to Cap. 541B”);
- (b) the EAC (Nominations Advisory Committees (Election Committee)) (Amendment) Regulation 2006 (“Amendment Regulation to Cap. 541H”); and
- (c) the EAC (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006 (“Amendment Regulation to Cap. 541I”).

This brief informs Members of the main provisions of the above three Regulations.

BACKGROUND

2. The coming Election Committee (“EC”) subsector ordinary elections will be held on 10 December 2006. The EAC has reviewed the subsidiary legislation under the EAC Ordinance (Cap. 541) and has identified that amendments under the following categories will be required to ensure the smooth conduct of the elections:

- (a) amendments consequential to the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (“the Amendment Ordinance”), which came into effect on 13 May 2006;
- (b) amendments to align the electoral procedures for EC subsector elections, where appropriate, with those for the Legislative Council (“LegCo”) election in 2004 and to rationalize certain electoral arrangements; and
- (c) technical amendments to remove obsolete provisions.

3. The amendments will cover the following three pieces of subsidiary legislation under the EAC Ordinance:

- (a) Cap. 541B which sets out the procedures for the registration of electors for the LegCo functional constituencies, voters for the EC subsectors and members of the EC;
- (b) Cap. 541H which provides for the appointment of Nominations Advisory Committees (“NACs”) to advise on nominations for the EC subsector elections; and
- (c) Cap. 541I which provides for the detailed arrangements for electoral procedures for the EC subsector elections.

AMENDMENT REGULATIONS

4. The Amendment Regulations to Cap. 541B, 541H and 541I are at **Annexes A, B and C** respectively. The major amendments are highlighted in the following paragraphs.

Amendments consequential to the Amendment Ordinance

(a) Interim register

5. Under the Amendment Ordinance, an interim register (“IR”) of EC members shall be compiled and published within 7 days after the results of EC subsector ordinary elections are published, and a final register (“FR”) of EC members shall be compiled and published on the date when the term of office of the EC commences (i.e. 1 February in the year during which the term of office of the Chief Executive expires).

6. Sections 2 and 37 of Cap. 541B are amended to provide the definition of IR and to set out the information to be included in an IR. The definition of FR is also amended. Section 39 of Cap. 541B is amended to extend the publication and inspection arrangements of the FR to cover the IR.

7. Section 10 of Cap. 541H is amended to make it clear that any advice given by the NACs under Cap. 541H or any refusal of the NACs to consider an application for advice or give advice does not preclude a person from objecting under the Election Committee (Appeals) Regulation (Cap. 569A) to the registration in the IR of a nominee (i.e. a person nominated by a designated body to be a member representing the religious subsector) as a member of the EC.

(b) Qualification for candidature

8. The Amendment Ordinance has added a new section to the Schedule to the Chief Executive Election Ordinance (“CEEEO”). The new section (section 18A) provides that, if a person is not a member of a District Council, or a Hong Kong member of the National Committee of the Chinese People’s Political Consultative Conference, or the Chairman, a Vice-Chairman or a Councillor of the Full Council of the Heung Yee Kuk, he is not qualified to be nominated as a candidate at an election of the respective subsectors, or be elected as an EC member of the respective subsectors. This new section necessitates consequential amendment to section 13 of Cap. 541I to require the Returning Officer (“RO”) to take this new section into account when deciding, upon his receipt of a nomination form for a subsector election, whether the candidate is validly nominated.

(c) References to the first EC

9. The Amendment Ordinance has taken out all provisions in the CEEO which make reference to the first EC, the term of which has already expired. In the process, the Amendment Ordinance has streamlined section 4 of the Schedule to the CEEO by removing the term “relevant date” (in relation to compilation and publication of a provisional register) from the section. References to the term “relevant date” in sections 24, 26 and 33 of Cap. 541B are consequentially amended.

Amendments to align the electoral procedures for EC subsector elections with those for LegCo election, and to rationalize certain existing electoral arrangements

(a) Designating polling stations as special polling stations

10. Section 29 of Cap. 541I is amended to provide that the Chief Electoral Officer (“CEO”) may designate the same place as a special polling station for a voter/an authorised representative (“AR”) with a disability, and at the same time a polling station for use by other voters/ARs.

(b) Revoking appointment of staff assisting in the conduct of elections

11. Sections 34 and 65 of Cap. 541I are amended to provide that CEO may revoke the appointments of Presiding Officers (“PROs”), Polling Officers (“POs”) and counting officers.

(c) No canvassing zones (“NCZs”) and no staying zones (“NSZs”)

12. Section 40 of Cap. 541I is amended to:

- (a) advance the deadline for RO to notify candidates on the determination of NCZs and NSZs from “5 days” to “7 days” before polling day;
- (b) provide that RO may authorise a PRO to vary the NCZ and NSZ on the polling day and display a notice at or near the polling station;

- (c) prohibit any person from conducting any activity on polling day for canvassing for votes so that the sound of the activity can be heard in the NCZ;
- (d) include head-dress as one of the election advertisements (“EAs”) that is prohibited from being displayed or worn in an NCZ; and
- (e) expressly spell out that activity for canvassing for votes may be conducted by a person on polling day in a building within the NCZ but with no polling station in it if he is allowed to enter the building.

(d) Polling stations

13. Section 44 of Cap. 541I is amended to provide that Police officers, members of the Civil Aid Service and persons authorised by RO to act as liaison officers may not be excluded from the polling stations.

14. Section 45 of Cap. 541I is amended to:

- (a) provide that in addition to PRO, RO, Assistant RO and PO may also direct a person not to communicate with voters/ARs or not to use any device for electronic communication within a polling station, and specify the types of EAs that a person should not display or wear inside the polling stations; and
- (b) increase the penalty for imprisonment for unauthorised filming, photographing, audio/video recording within a polling station from 3 months to 6 months.

(e) Procedure for Voting

15. Section 54 of Cap. 541I is amended to enable the EAC to direct voters/ARs to follow the direction of the EAC as regards how a ballot paper should be put into the ballot box. This provides the EAC with flexibility to determine the detailed voting procedures in the light of factors such as size of ballot papers, ballot box design, counting arrangement, etc.

16. Section 58 of Cap. 541I is amended to clarify the procedures for issuing tendered ballot paper and align them with those for LegCo elections.

(f) Counting of votes

17. Section 63 of Cap. 541I is amended to change the deadline for RO to send a written notice of time and place of vote counting to each of the candidates, their election agents or counting agents, from “24 hours in advance” to “one working day before polling day” so that candidates or their agents will be properly notified before the polling day.

18. Section 64 of Cap. 541I is amended to advance the deadline for a candidate to notify RO of his appointment of any counting agent from “at least 3 working days before polling day” to “at least one week before polling day” to provide sufficient time for RO to make the necessary arrangements.

19. Section 74A of Cap. 541I is added to:

- (a) make clear that ballot papers on which there is writing or a mark by which the voter can “possibly” be identified fall under the category of questionable ballot papers;
- (b) specify the types of questionable ballot papers that must be separated for RO to decide whether the votes should be counted; and
- (c) specify the types of ballot papers which are clearly invalid by their nature (i.e. tendered, unused, spoilt or unmarked ballot papers) and which must therefore be separated and not counted.

20. Section 77 of Cap. 541I is amended to specify that a candidate, an election agent or a counting agent may inspect ballot papers which are clearly invalid by their nature (see paragraph 19(c) above), but is not entitled to make representations to the RO concerning such ballot papers.

21. Section 78 of Cap. 541I is amended to provide that, in addition to the candidate and the election agent, a counting agent may also inspect questionable ballot papers set aside by RO and make representations to RO, or raise objections to RO’s decisions to accept or reject a questionable ballot paper.

(g) Secrecy of votes

22. Section 92 of Cap. 541I is amended to require an election agent to make a declaration of secrecy before entering the counting station to attend the counting of votes.

23. Section 93 of Cap. 541I is amended to increase the penalty for imprisonment for violation of secrecy of vote from 3 months to 6 months.

(h) Others

24. Sections 95 and 100 of Cap. 541I are amended to provide that, in addition to RO:

- (a) the PRO may also publish or display a notice, determination, or other writing under Cap. 541I; and
- (b) other persons authorized by RO may also seize and dispose of, destroy, obliterate or cover EAs not complied with the legal requirements.

Technical amendments to remove obsolete provisions

25. The EAC proposes to remove all relevant provisions in Cap. 541B which make reference to the LegCo functional constituency provisional register and the EC subsector provisional register for 2003 which are now obsolete¹. Sections 19, 26, 27 and 28 of Cap. 541B are amended to remove such obsolete provisions.

PUBLIC CONSULTATION

26. On 20 March 2006, we briefed the LegCo Panel on Constitutional Affairs on the scope of amendments, and Members did not raise any objection.

¹ Provisions have been made in Cap. 541B regarding the functional constituency provisional register and subsector provisional register for 2003 to cater for the exceptional circumstances arising from the revision of the voter registration cycle taking effect from that year. Such provisions are no longer applicable to subsequent years.

IMPLICATIONS OF THE AMENDMENT REGULATIONS

27. Sufficient provisions have been included in the Estimates of the Registration and Electoral Office for the preparation and conduct of the 2006 EC subsector elections. The Amendment Regulations are in conformity with the Basic Law, including the provisions concerning human rights.

LEGISLATIVE TIMETABLE

28. The Amendment Regulations will be published in the Gazette on 19 May 2006 and tabled in the Council on 24 May 2006.

PUBLICITY

29. A press release will be issued to announce the publication of the Amendment Regulations in the Gazette. A spokesman will be available for answering media enquiries.

Registration and Electoral Office
May 2006

ELECTORAL AFFAIRS COMMISSION (REGISTRATION) (ELECTORS
FOR LEGISLATIVE COUNCIL FUNCTIONAL CONSTITUENCIES)
(VOTERS FOR ELECTION COMMITTEE SUBSECTORS)
(MEMBERS OF ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2006

CONTENTS

Section		Page
1.	Commencement	1
PART 1 AMENDMENTS RELATING TO ADDITION OF INTERIM REGISTER OF MEMBERS OF ELECTION COMMITTEE		
2.	Interpretation	1
3.	Part heading amended	2
4.	What is to be contained in an Election Committee final register	2
5.	Publication of an Election Committee final register	3
PART 2 AMENDMENTS CONSEQUENTIAL UPON REMOVAL OF THE TERM "RELEVANT DATE" FROM SECTION 4 OF SCHEDULE TO CHIEF EXECUTIVE ELECTION ORDINANCE		
6.	Electoral Registration Officer to prepare an omissions list	5

7. Electoral Registration Officer to correct entries in existing final register in compiling next provisional register 5
8. Electoral Registration Officer to correct entries in provisional register in compiling final register 6

PART 3
AMENDMENTS REMOVING OBSOLETE PROVISIONS RELATING TO
FUNCTIONAL CONSTITUENCIES PROVISIONAL REGISTER
AND SUBSECTOR PROVISIONAL REGISTER FOR 2003

9. How to apply for registration in functional constituencies provisional register and subsector provisional register 6
10. Electoral Registration Officer to correct entries in existing final register in compiling next provisional register 7
11. What is to be contained in a functional constituencies provisional register 7
12. What is to be contained in a subsector provisional register 8

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION) (ELECTORS
FOR LEGISLATIVE COUNCIL FUNCTIONAL CONSTITUENCIES)
(VOTERS FOR ELECTION COMMITTEE SUBSECTORS)
(MEMBERS OF ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2006**

(Made by the Electoral Affairs Commission under section
7 of the Electoral Affairs Commission Ordinance (Cap. 541))

1. Commencement

This Regulation shall come into operation on 14 July 2006.

PART 1

AMENDMENTS RELATING TO ADDITION OF
INTERIM REGISTER OF MEMBERS
OF ELECTION COMMITTEE

2. Interpretation

(1) Section 2(1) of the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541 sub. leg. B) is amended, in the definition of "Election Committee final register", by repealing "section 40(1), (2) or (3)" and substituting "section 40(2), (3) or (3A)".

(2) Section 2(1) is amended, in the definition of "Election Committee register", by adding ", an Election Committee interim register" after "provisional register".

(3) Section 2(1) is amended by adding -

"Election Committee interim register" (選舉委員會暫行委員
登記冊) means the interim register of members of the

Election Committee required to be compiled under section 40(1) of the Schedule to the Chief Executive Election Ordinance (Cap. 569);".

3. Part heading amended

Part VII is amended, in the heading, by adding "INTERIM REGISTER AND" before "FINAL REGISTERS".

4. What is to be contained in an Election Committee final register

(1) Section 37 is amended, in the heading, by adding "**an Election Committee interim register and**" after "**contained in**".

(2) Section 37(1) is amended by repealing "Election Committee final register required to be compiled under section 40(1) of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "Election Committee interim register".

(3) Section 37 is amended by adding -

"(1AA) An Election Committee final register required to be compiled under section 40(3A) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) is to consist of the specified particulars of persons contained in the relevant Election Committee interim register, as amended, where appropriate, under section 41 or 42 of that Schedule."

(4) Section 37(2)(a) is amended by adding "an Election Committee interim register or" before "an Election Committee".

(5) Section 37(2)(b) is amended by adding "an Election Committee interim register or" before "an Election Committee".

(6) Section 37(3) is amended by adding "an Election Committee interim register or" before "an Election Committee".

(7) Section 37(4) is amended by adding "an Election Committee interim register or" before "an Election Committee".

(8) Section 37(5) is amended by adding "an Election Committee interim register or" before "an Election Committee".

**5. Publication of an Election Committee
final register**

(1) Section 39 is amended, in the heading, by adding "**an Election Committee interim register and**" after "**Publication of**".

(2) Section 39(1) is amended by adding "an Election Committee interim register or" before "an Election Committee".

(3) Section 39(2)(a) is amended by repealing "final register" and substituting "interim register or Election Committee final register, as may be appropriate,".

(4) Section 39(2)(b) is amended by repealing "final".

(5) Section 39(3) is amended by repealing everything after "inspection," and substituting "at the place or places specified in the notice during ordinary business hours, a copy of the Election Committee interim register or Election Committee final register.".

(6) Section 39(4) is amended by repealing everything before "The Electoral Registration Officer may determine" and substituting -

"(4) The Electoral Registration Officer may make available for public inspection, at a place additional to a place specified in a notice published under subsection (1), a copy of a specific part of the Election Committee interim register or Election Committee final register."

(7) Section 39(4A) is amended -

- (a) by adding "Election Committee interim register or" before "Election Committee";
- (b) by repealing "that register" and substituting "such register".

(8) Section 39(5) is amended -

- (a) by adding "an Election Committee interim register or" before "an Election Committee";
- (b) by repealing "the Election Committee final register for" and substituting "that register for".

PART 2

AMENDMENTS CONSEQUENTIAL UPON REMOVAL OF THE TERM "RELEVANT DATE" FROM SECTION 4 OF SCHEDULE TO CHIEF EXECUTIVE ELECTION ORDINANCE

**6. Electoral Registration Officer to
prepare an omissions list**

Section 24(3A) is amended by repealing "on the relevant date within the meaning of section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "on the date on which the relevant vacancy declaration within the meaning of section 4(7) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) was made".

**7. Electoral Registration Officer to correct
entries in existing final register in
compiling next provisional register**

(1) Section 26(5)(e)(i) is amended by repealing "the relevant date within the meaning of section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "the date on which the relevant vacancy declaration within the meaning of section 4(7) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) was made".

(2) Section 26(5)(e)(ii) is amended by repealing "the relevant date within the meaning of section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "the date on which the relevant vacancy declaration within the meaning of section 4(7) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) was made".

8. Electoral Registration Officer to correct entries in provisional register in compiling final register

(1) Section 33(7)(b) is amended by repealing "the relevant date within the meaning of section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "the date on which the relevant vacancy declaration within the meaning of section 4(7) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) was made".

(2) Section 33(10)(a)(ii) is amended by repealing "the relevant date within the meaning of section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569)" and substituting "the date on which the relevant vacancy declaration within the meaning of section 4(7) of the Schedule to the Chief Executive Election Ordinance (Cap. 569) was made".

PART 3

AMENDMENTS REMOVING OBSOLETE PROVISIONS RELATING TO
FUNCTIONAL CONSTITUENCIES PROVISIONAL REGISTER
AND SUBSECTOR PROVISIONAL REGISTER FOR 2003

9. How to apply for registration in functional constituencies provisional register and subsector provisional register

(1) Section 19(4)(a) is repealed.

(2) Section 19(4)(b) is amended -

(a) by repealing "any year subsequent to 2002, if that subsequent year is a District Council election

year," and substituting "a District Council election year";

(b) by repealing "year following that subsequent" and substituting "following".

(3) Section 19(4)(c) is amended -

(a) by repealing "any year subsequent to 2002, if that subsequent year is not a District Council election year," and substituting "a year which is not a District Council election year";

(b) in subparagraph (i), by repealing "year following that subsequent" and substituting "following";

(c) in subparagraph (ii), by repealing "year following that subsequent" and substituting "following".

10. Electoral Registration Officer to correct entries in existing final register in compiling next provisional register

(1) Section 26(5)(a) is repealed.

(2) Section 26(5)(b) is amended by repealing "subsequent functional constituencies provisional register or any subsequent" and substituting "functional constituencies provisional register or any".

11. What is to be contained in a functional constituencies provisional register

(1) Section 27(c)(i)(A) is repealed.

(2) Section 27(c)(i)(B) is amended by repealing "subsequent".

(3) Section 27(c)(ii)(A) is repealed.

(4) Section 27(c)(ii)(B) is amended by repealing "subsequent".

**12. What is to be contained in a subsector
provisional register**

(1) Section 28(1)(a)(i)(A) is repealed.

(2) Section 28(1)(a)(i)(B) is amended by repealing "subsequent".

(3) Section 28(1)(a)(ii)(A) is repealed.

(4) Section 28(1)(a)(ii)(B) is amended by repealing "subsequent".

Made this 15th day of May 2006.

WOO Kwok-hing, VP
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

The purpose of this Regulation is to amend the Electoral Affairs Commission (Registration) (Electors for Legislative Council Functional Constituencies) (Voters for Election Committee Subsectors) (Members of Election Committee) Regulation (Cap. 541 sub. leg. B) ("the principal Regulation") to provide for the following.

Part 1

2. Under the amendments introduced by the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) ("the Amendment Ordinance"), an interim register, instead of a final register, is to be compiled and published under section 40(1) of the Schedule to the Chief Executive Election Ordinance (Cap. 569), for the Election Committee members after the publication of the results of the Election Committee subsector ordinary elections.

3. Part 1 introduces corresponding amendments to the principal Regulation to reflect the change as mentioned in paragraph 2 to provide for the compilation and publication arrangements in relation to the interim register.

Part 2

4. Part 2 introduces amendments to the principal Regulation consequential upon the removal of the term "relevant date" from section 4 of the Schedule to the Chief Executive Election Ordinance (Cap. 569) under the amendments introduced by the Amendment Ordinance.

Part 3

5. Part 3 introduces amendments to remove those obsolete provisions relating to the functional constituencies provisional register and subsector provisional register for 2003.

**ELECTORAL AFFAIRS COMMISSION (NOMINATIONS ADVISORY
COMMITTEES (ELECTION COMMITTEE))(AMENDMENT)
REGULATION 2006**

(Made by the Electoral Affairs Commission under section 7
of the Electoral Affairs Commission Ordinance (Cap. 541))

1. Commencement

This Regulation shall come into operation on 14 July 2006.

**2. Advice not to preclude seeking
of nomination, etc.**

(1) Section 10(1)(d) of the Electoral Affairs Commission
(Nominations Advisory Committees (Election Committee)) Regulation
(Cap. 541 sub. leg. H) is amended by adding "interim register or"
before "final register".

(2) Section 10(2) is repealed and the following
substituted -

"(2) In subsection (1)(d) -
"final register" (正式委員登記冊) means a register
published under section 40(2), (3) or (4) of the
Schedule to the Chief Executive Election Ordinance
(Cap. 569);

"interim register" (暫行委員登記冊) means a register
published under section 40(1) of the Schedule to
the Chief Executive Election Ordinance (Cap.
569)."

Made this 15th day of May 2006.

WOO Kwok-hing, VP
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

Under the amendments introduced by the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006), an interim register, instead of a final register, is to be compiled and published under

section 40(1) of the Schedule to the Chief Executive Election Ordinance (Cap. 569), for the Election Committee members after the publication of the results of the Election Committee subsector ordinary elections.

2. This Regulation amends the Electoral Affairs Commission (Nominations Advisory Committees (Election Committee)) Regulation (Cap. 541 sub. leg. H) ("the principal Regulation") correspondingly to reflect the change as mentioned in paragraph 1, to make it clear that any advice given by the Nominations Advisory Committee under the principal Regulation or any refusal of the Committee to consider an application for advice or give advice does not preclude a person from objecting under the Election Committee (Appeals) Regulation (Cap. 569 sub. leg. A) to the registration in the interim register or final register of a nominee as a member of the Election Committee.

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (ELECTION
COMMITTEE) (AMENDMENT) REGULATION 2006**

CONTENTS

Section		Page
1.	Commencement	1
2.	Interpretation	1
3.	Returning Officer to decide whether candidates are validly nominated	1
4.	Chief Electoral Officer to designate some polling stations as special polling stations	1
5.	Chief Electoral Officer to appoint Presiding Officers for each polling station	2
6.	Returning Officer to determine no canvassing zones and no staying zones	2
7.	Presiding Officer to keep order in no canvassing zone and no staying zone	4
8.	Who may enter or be present at polling station	5
9.	What constitutes offence at polling station	5
10.	Procedure for voting	6
11.	Section substituted	
	58. When person is to be issued with ballot paper marked "重複" and "TENDERED"	8
12.	Returning Officer to give notice of time and place of counting of votes to candidates	9
13.	Candidates may appoint counting agents	9
14.	Chief Electoral Officer to appoint counting officers	9
15.	Section added	
	74A. Invalid and questionable ballot papers	9

16.	Ballot papers the votes recorded on which are not to be counted	10
17.	Returning Officer to make decisions on questionable ballot papers	11
18.	Returning officer to seal ballot papers in packets	12
19.	Electoral officers, candidates and agents to make declaration of secrecy	13
20.	Enforcement of provisions as to secrecy	13
21.	Publication and display of notices, etc.	13
22.	Election advertisements	13

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE) (AMENDMENT)
REGULATION 2006**

(Made by the Electoral Affairs Commission under
section 7 of the Electoral Affairs Commission
Ordinance (Cap. 541))

1. Commencement

This Regulation shall come into operation on 14 July 2006.

2. Interpretation

Section 1(1) of the Electoral Affairs Commission
(Electoral Procedure) (Election Committee) Regulation (Cap.
541 sub. leg. I) is amended by adding -

““head-dress” (頭飾) means anything which is worn on a
person’s head;”.

**3. Returning Officer to decide
whether candidates are
validly nominated**

(1) Section 13(2) is amended by repealing “17 and 18”
and substituting “17, 18 and 18A”.

(2) Section 13(3) is amended by repealing “17 and 18”
and substituting “17, 18 and 18A”.

**4. Chief Electoral Officer to designate
some polling stations as special
polling stations**

Section 29 is amended by adding -

"(2A) The Chief Electoral Officer may, for the purpose of subsection (1), designate as a special polling station any place which has been designated as a polling station under section 28."

5. Chief Electoral Officer to appoint Presiding Officers for each polling station

(1) Section 34 is amended, in the heading, by repealing **"appoint Presiding Officers"** and substituting **"appoint or remove Presiding Officers, etc."**.

(2) Section 34 is amended by adding -

"(3) The Chief Electoral Officer may at any time revoke the appointment of any Presiding Officer or polling officer."

6. Returning Officer to determine no canvassing zones and no staying zones

(1) Section 40(5) is amended by repealing "5 days" and substituting "7 days".

(2) Section 40 is amended by adding -

"(8A) A Returning Officer may perform any act which that Officer is required or authorized to

perform under subsections (7) and (8) through a Presiding Officer.”.

(3) Section 40(14)(a) is amended by repealing “(15)(a)” and substituting “(15)”.

(4) Section 40(14) is amended by adding -

“(aa) conduct any activity for canvassing for votes so that the sound of the activity can be heard in the no canvassing zone;”.

(5) Section 40(14)(d) is amended by repealing “(15)(b)” and substituting “(16)”.

(6) Section 40(14)(d) is amended by adding “or wear” after “display”.

(7) Section 40(14)(d) is amended by repealing “or clothing” and substituting “, clothing or head-dress”.

(8) Section 40(15) is repealed and the following substituted -

“(15) On polling day, a person may, without obstructing any person, canvass for votes from door to door on the storeys above or below street level in a building within the no canvassing zone which -

(a) the person is allowed to enter for the purpose of canvassing for votes; and

(b) has no polling station inside it.”.

(9) Section 40 is amended by adding -

"(16) A person may, for the purpose of canvassing for votes pursuant to subsection (15), display or wear any badge, emblem, clothing or head-dress referred to in subsection (14)(d).".

7. Presiding Officer to keep order in no canvassing zone and no staying zone

(1) Section 41(1)(a) is amended by repealing "40(15)(a)" and substituting "40(15)".

(2) Section 41(1) is amended by adding -

"(aa) conduct any activity for canvassing for votes so that the sound of the activity can be heard in the no canvassing zone;".

(3) Section 41(1)(d) is amended by repealing "40(15)(b)" and substituting "40(16)".

(4) Section 41(1)(d) is amended by adding "or wear" after "display".

(5) Section 41(1)(d) is amended by repealing "or clothing" and substituting ", clothing or head-dress".

(6) Section 41(4) is amended by repealing "area" and substituting "zone".

8. Who may enter or be present at polling station

Section 44 (4) is amended -

- (a) in paragraph (g), by repealing "or";
- (b) in paragraph (h), by repealing the full stop and substituting a semicolon;
- (c) by adding -
 - "(i) police officers and members of the Civil Aid Service on duty at the polling station; or
 - (j) a person authorized in writing by the Returning Officer to act as a liaison officer."

9. What constitutes offence at polling station

(1) Section 45(1) is amended by repealing "Presiding Officer" and substituting "Returning Officer, Assistant Returning Officer, Presiding Officer or any polling officer".

(2) Section 45(5) is amended by adding "or wears" after "displays".

(3) Section 45(5) is amended by repealing "or clothing" and substituting ", clothing or head-dress".

(4) Section 45(6) is amended by adding -

"(aa) an Assistant Returning Officer;".

(5) Section 45(7) is repealed and the following substituted -

"(7) A person who commits an offence under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months."

(6) Section 45 is amended by adding -

"(8) A person who commits an offence under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months."

10. Procedure for voting

(1) Section 54(1) is amended by repealing everything after "as appropriate."

(2) Section 54 is amended by adding -

"(1A) After marking a ballot paper, a voter or authorized representative must put the ballot paper into the ballot box in accordance with any direction given under subsection (1B).

(1B) The Commission may direct, in such manner as it thinks fit, a voter or authorized representative -

(a) to put the ballot paper, unfolded, into the ballot box with the marked side facing down;

(b) to -

(i) fold the ballot paper so that the marked side is inside; and

(ii) put the folded ballot paper into the ballot box;

(c) to -

(i) put the ballot paper, unfolded, into an envelope provided at the polling station; and

(ii) put the ballot paper contained in the envelope into the ballot box; or

(d) to -

(i) fold the ballot paper so that the marked side is inside;

(ii) put the folded ballot paper into an envelope provided at the polling station; and

(iii) put the ballot paper contained in the envelope into the ballot box.".

11. Section substituted

Section 58 is repealed and the following substituted -

**"58. When person is to be issued with
ballot paper marked "重複" and
"TENDERED"**

(1) Subject to subsection (2) and section 55, if a person ("the first-mentioned person") representing himself or herself to be a particular voter or authorized representative registered in the subsector final register applies for a ballot paper after a person has been issued with a ballot paper earlier on the basis that he or she is that first-mentioned person, the Presiding Officer must issue to the first-mentioned person a ballot paper endorsed on the front of it with the words "重複" and "TENDERED".

(2) The Presiding Officer may issue a ballot paper under subsection (1) only if -

- (a) the Presiding Officer is not certain that the first-mentioned person is the person who has been issued with a ballot paper earlier; and
- (b) the first-mentioned person answers the appropriate questions set out in section 51 to the satisfaction of the Presiding Officer."

12. Returning Officer to give notice of time and place of counting of votes to candidates

Section 63(4) is amended by repealing everything after "at least" and substituting "1 working day before polling day."

13. Candidates may appoint counting agents

Section 64(5)(a) is amended by repealing "to reach that Officer at least 3 working days" and substituting "at least 1 week".

14. Chief Electoral Officer to appoint counting officers

(1) Section 65 is amended, in the heading, by adding "or remove" after "appoint".

(2) Section 65 is amended by adding -

"(4) The Chief Electoral Officer may at any time revoke the appointment of a counting officer."

15. Section added

The following is added -

"74A. Invalid and questionable ballot papers

In the course of counting in accordance with section 73(2) or (3), or 74(2) or (3) -

- (a) any ballot paper which -
- (i) appears to have any writing or mark by which the voter can possibly be identified;
 - (ii) appears to be not marked in accordance with section 56;
 - (iii) appears to be substantially mutilated; or
 - (iv) appears to be void for uncertainty,
- is questionable and must be separated and forwarded to the Returning Officer to decide whether the vote is to be counted under section 78; and
- (b) any ballot paper described in section 77(1)(b), (c), (d) and (f) must be separated and the vote is not to be counted under section 77."

16. Ballot papers the votes recorded on which are not to be counted

(1) Section 77 is amended, in the Chinese text, in the heading, by repealing "不得點算" and substituting "不予點算".

(2) Section 77(1) is amended by repealing "The votes recorded on the following" and substituting "Upon counting of

votes, the following ballot papers are not to be regarded as valid and the votes recorded on the".

(3) Section 77(1)(a) is amended by adding "possibly" after "can".

(4) Section 77 is amended by adding -

"(4) A candidate, an election agent or a counting agent -

(a) may inspect a ballot paper referred to in subsection (1)(b), (c), (d) or (f); but

(b) is not entitled to make representations to the Returning Officer concerning the ballot paper."

17. Returning Officer to make decisions on questionable ballot papers

(1) Section 78(1) and (2) is repealed.

(2) Section 78(3) is repealed and the following substituted -

"(3) If a ballot paper is forwarded to the Returning Officer under section 74A(a), a candidate, an election agent or a counting agent, if present at the counting of votes, may -

(a) inspect the ballot paper; and

(b) make representations to the
Returning Officer concerning the
ballot paper.”.

(3) Section 78(5) is amended by repealing “不予接納”
and substituting “不獲接納”.

(4) Section 78(5) is amended by repealing “or an
election agent” and substituting “, an election agent or a
counting agent”.

(5) Section 78(5) is amended by repealing “不予接納的
決定遭反對” and substituting “反對此選票不獲接納”.

(6) Section 78(6) is amended by repealing “or an
election agent” and substituting “, an election agent or a
counting agent”.

(7) Section 78(6) is amended by repealing “予以接納
的決定遭反對” and substituting “反對此選票獲接納”.

(8) Section 78(7)(a) is amended by adding “possibly”
after “can”.

18. Returning officer to seal ballot papers in packets

(1) Section 82(1)(e) is amended, in the Chinese text, by
repealing “不予接納” and substituting “不獲接納”.

(2) Section 82(2)(e) is amended, in the Chinese text, by
repealing “不予接納” and substituting “不獲接納”.

19. Electoral officers, candidates and agents

to make declaration of secrecy

Section 92(2) is amended by adding "election agent," after "candidate,".

20. Enforcement of provisions as to secrecy

Section 93(10) is amended by repealing "3 months" and substituting "6 months".

21. Publication and display of notices, etc.

Section 95(1) is amended by adding "or the Presiding Officer" after "Returning Officer".

22. Election advertisements

(1) Section 100(14) is amended by adding "or any person authorized by that Officer" after "Returning Officer".

(2) Section 100(14) is amended by adding "or obliterate," after "destroy,".

(3) Section 100(14) is amended by adding "or the person" after "that Officer".

(4) Section 100(15)(d) is amended by repealing "T-shirt, cap, badge or carrier bag" and substituting "badge, carrier bag, clothing or head-dress".

Made this day of 2006.

WOO Kwok-hing, VP
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

This Regulation amends the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) ("the principal Regulation"). Its objectives are as follows.

Section 1

2. The commencement of this Regulation is provided for.

Section 2

3. The definition of "head-dress" is added to section 1 of the principal Regulation mainly for prohibiting, by virtue of the newly amended sections 40(14)(d) and 45(5) of the principal Regulation, display in the no canvassing zone and a polling station of head-dress for election purposes on polling day of an Election Committee subsector election.

Section 3

4. Section 13(2) and (3) of the principal Regulation, which provides for nomination of a candidate for the Election Committee subsector election, is amended to tie in with the amendment lately introduced by the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) ("the Amendment Ordinance"). By virtue of the Amendment Ordinance, new section 18A is added to the Schedule to the Chief Executive Election Ordinance (Cap. 569) to provide for disqualification of candidates for the subsectors of the Chinese People's Political Consultative Conference, Heung Yee Kuk and the District Councils.

Section 4

5. Section 29 of the principal Regulation is amended to provide that the Chief Electoral Officer may designate the same place as a special polling station for use by persons with a disability and a polling station for use by other voters.

Section 5

6. Section 34 of the principal Regulation is amended to provide that the Chief Electoral Officer may at any time remove any Presiding Officer or polling officer.

Section 6

7. Section 40 of the principal Regulation is amended to -

- (a) require the Returning Officer to give notice to the candidates of the determination of a no canvassing zone and a no staying zone at least 7 days (instead of 5 days as it is now required) before polling day;
- (b) provide that the Returning Officer may perform certain functions through the Presiding Officer;
- (c) prohibit any person from conducting any activity on polling day for canvassing for votes so that the sound of the activity can

- be heard in the no canvassing zone; and
- (d) expressly spell out that activity for canvassing for votes may be conducted by a person on polling day in a building within the no canvassing zone but with no polling station inside it only if he is allowed to enter the building.

Section 7

8. Section 41 of the principal Regulation is amended to provide that the Presiding Officer must use his best endeavours to ensure that a person does not, on polling day, conduct any activity for canvassing for votes so that the sound of the activity can be heard in the no canvassing zone.

Section 8

9. Section 44 of the principal Regulation is amended to provide that police officers, members of the Civil Aid Service and the persons authorized in writing by the Returning Officer to act as liaison officers be included in the category of persons who may not be excluded from the polling station by the Presiding Officer.

Section 9

10. Section 45 of the principal Regulation is amended to -

- (a) provide that, in addition to the Presiding Officer, the Returning Officer, Assistant Returning Officer and any polling officer may also direct a person not to communicate with a voter or an authorized representative, or not to use any device for electronic communication, on polling day within a polling station; and
- (b) increase the penalty for imprisonment for a person who, on polling day, films or takes photographs or makes any audio or video recording within a polling station without the requisite permission from 3 to 6 months.

Section 10

11. Section 54 of the principal Regulation is amended to provide that the Electoral Affairs Commission may direct as to the manner in which a voter or authorized representative must put the ballot paper into the ballot box.

Section 11

12. Section 58 of the principal Regulation is amended to provide clearly that if a person ("the first-mentioned person") representing himself to be a particular voter or

authorized representative registered in the subsector final register applies for a ballot paper after a person has been issued with a ballot paper earlier on the basis that he is that first-mentioned person, the Presiding Officer may issue a ballot paper marked "TENDERED" to the first-mentioned person only if -

- (a) the Presiding Officer is not certain that the first-mentioned person is the person who has been issued with a ballot paper earlier; and
- (b) the first-mentioned person answers the appropriate questions to the satisfaction of the Presiding Officer.

Section 12

13. Section 63 of the principal Regulation is amended to require the Returning Officer to give notice to the candidates of the time and place determined for the counting of votes at least 1 working day before polling day (instead of 24 hours in advance of the determined time as it is now required).

Section 13

14. Section 64 of the principal Regulation is amended to require a candidate to give notice of appointment of counting agent to the Returning Officer at least 1 week (instead of

reaching the Returning Officer at least 3 working days as it is now required) before polling day.

Section 14

15. Section 65 of the principal Regulation is amended to provide that the Chief Electoral Officer may at any time remove any counting officer.

Section 15

16. A new section 74A is added to the principal Regulation to provide in the course of counting -

- (a) which ballot papers cast in an election are questionable and must be separated and forwarded to the Returning Officer to decide whether the votes are to be counted under section 78 of the principal Regulation; and
- (b) which ballot papers cast in an election must be separated and the votes are not to be counted under section 77 of the principal Regulation.

Section 16

17. Section 77 of the principal Regulation is amended to specify a candidate, an election agent or a counting agent may inspect certain kinds of ballot papers cast in an election but is not entitled to make representations as to the same.

Section 17

18. Section 78 of the principal Regulation is amended to tie in with the amendment to section 77 of, and the addition of section 74A to, the principal Regulation. It also provides that, in addition to a candidate and an election agent, a counting agent may also inspect questionable ballot papers and make representations to that Officer, or raise objections to that Officer's decision to accept or reject a questionable ballot paper.

Section 18

19. The Chinese text of section 82(1)(e) and (2)(e) of the principal Regulation is amended consequential upon the amendments made to section 78(5) of the principal Regulation.

Section 19

20. Section 92 of the principal Regulation is amended to require an election agent to make a declaration of secrecy.

Section 20

21. Section 93 of the principal Regulation is amended to increase the penalty for imprisonment for violation of secrecy as to voting from 3 to 6 months.

Section 21

22. Section 95 of the principal Regulation is amended to provide that, in addition to the Returning Officer, the Presiding Officer may also publish or display a notice, determination, or other writing under the principal Regulation.

Section 22

23. Section 100 of the principal Regulation is amended to provide that, in addition to the Returning Officer, other persons authorized by the Returning Officer may also seize and dispose of, or destroy, or obliterate, or cover any election advertisements not complying with the legal requirements.