

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

**Electoral Affairs Commission (Electoral Procedure)
(District Councils) (Amendment) Regulation 2007**

INTRODUCTION

On 7 May 2007, the Electoral Affairs Commission (“EAC”) made the EAC (Electoral Procedure) (District Councils) (Amendment) Regulation 2007 (“the Amendment Regulation”). This brief informs Members of the main provisions of the Amendment Regulation.

BACKGROUND

2. The EAC (Electoral Procedure) (District Councils) Regulation (Cap. 541F) (“the principal Regulation”) provides for the detailed electoral procedures for District Council (“DC”) elections. To prepare for the 2007 DC election, the Registration and Electoral Office (“REO”) has reviewed the principal Regulation and has identified that amendments under the following categories will be required:

- (a) miscellaneous amendments to align the electoral procedures for DC elections, where appropriate, with those for the Legislative Council (“LegCo”), the Election Committee Subsector (“ECSS”) and the Chief Executive (“CE”) elections; and
- (b) consequential amendments arising from the Particulars Relating to Candidates on Ballot Papers (LegCo) (Amendment) Regulation 2007, which was tabled at LegCo on 28 March 2007 and completed the negative vetting procedure on 25 April 2007.

AMENDMENT REGULATION

3. The Amendment Regulation is attached at **Annex A**. The major amendments are highlighted in the following paragraphs.

(i) Amendments to align the electoral procedures for DC elections with those for LegCo, ECSS and CE elections

4. After reviewing the principal Regulation, the REO has identified certain provisions for which amendments will be required to tally, where appropriate, with those for the LegCo, ECSS and CE elections, as set out in the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D), the EAC (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) and the Electoral Procedure (CE Election) Regulation (Cap. 541J) respectively. The legislative amendments are related to, among other things, specifying the Chief Electoral Officer's power to revoke the appointment of electoral staff with reasonable cause, refining the electoral arrangements to facilitate the keeping of order within polling stations on polling day and the counting of votes, and increasing the maximum term of imprisonment for unauthorized filming, photographing or audio/video recording within a polling station and for violation of secrecy of vote. The main amendments to the principal Regulation in this regard are set out at **Annex B** for easy reference.

(ii) Consequential amendments arising from the Particulars Relating to Candidates on Ballot Papers (LegCo) (Amendment) Regulation 2007

5. The EAC made the Particulars Relating to Candidates on Ballot Papers (LegCo) (Amendment) Regulation 2007 on 20 March 2007. The purpose is to expand the scope of the Particulars Relating to Candidates on Ballot Papers (LegCo) Regulation (Cap. 541M), so that the arrangement adopted in LegCo elections since 2004, of allowing candidates to have the following particulars printed on ballot papers, will also apply to DC elections:

- (a) the names, the abbreviations of the names and the emblems of prescribed bodies;
- (b) the personal emblems and the photographs of candidates; and
- (c) the words "Independent Candidate" or "Non-affiliated Candidate".

6. Corresponding amendments have to be made to the principal Regulation consequential upon the making of the Particulars Relating to Candidates on Ballot Papers (LegCo) (Amendment) Regulation 2007. The main amendments to the principal Regulation in this regard are set out at **Annex C** for easy reference. They are similar to those amendments made to the EAC (Electoral Procedure) (LegCo) Regulation (Cap. 541D) in 2004 when the arrangement of allowing candidates to have certain specified particulars printed on ballot papers was first implemented in the 2004 LegCo election.

PUBLIC CONSULTATION

7. On 26 March 2007, we briefed the LegCo Panel on Constitutional Affairs on the tentative scope of the amendments, and Members did not raise any objection.

IMPLICATIONS OF THE AMENDMENT REGULATION

8. Sufficient provisions have been included in the Estimates of the REO for the preparation and conduct of the 2007 DC election. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights, and has no environmental, productivity or sustainability implications. The Amendment Regulation will not affect the current binding effect of the principal Regulation.

LEGISLATIVE TIMETABLE

9. The Amendment Regulation will be published in the Gazette on 11 May 2007 and tabled in the Council on 16 May 2007.

PUBLICITY

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

Registration and Electoral Office
May 2007

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (DISTRICT COUNCILS)
(AMENDMENT) REGULATION 2007**

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**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (DISTRICT COUNCILS)
(AMENDMENT) REGULATION 2007**

(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 1 September 2007.

2. Interpretation

(1) Section 2(1) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) is amended by repealing the definition of "political body".

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

"prescribed body" (訂明團體) has the meaning assigned to it by section 2(1) of the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541 sub. leg. M);

"registered" (登記), in the context of a registered name or a registered emblem, has the meaning assigned to it by section 2(1) of the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541 sub. leg. M);".

3. Returning Officer to declare if a validly nominated candidate is known to have died

(1) Section 24 is amended, in the heading, by repealing everything after "**Returning Officer to**" and substituting "**notify and declare if a validly nominated candidate is proved to have died**".

(2) Section 24(1) is amended by repealing "comes to the knowledge" and substituting "is proved to the satisfaction".

4. Returning Officer to vary decision if a validly nominated candidate is known to be disqualified

(1) Section 25 is amended, in the heading, by repealing "**known**" and substituting "**proved**".

(2) Section 25(1) is amended by repealing "comes to the knowledge" and substituting "is proved to the satisfaction".

5. A candidate may authorize persons to incur election expenses on the candidate's behalf

(1) Section 28(3) is amended by repealing "and state" and substituting "and in the specified form, and must state".

(2) Section 28(6) is repealed and the following substituted -

"(6) A copy of the authorization must be served -

(a) on the Returning Officer; or

(b) if the Returning Officer has not been appointed, on the Chief Electoral Officer.".

(3) Section 28(7) is repealed and the following substituted -

"(7) Service of a copy of the authorization may be effected by delivery by hand, by post or by facsimile transmission."

(4) Section 28 is amended by adding -

"(7A) The Returning Officer or the Chief Electoral Officer, as the case may be, is to regard an authorization of an election expense agent to incur election expenses at or in connection with an election as being effective, for any purpose related to the election for which the authorization is relevant, only when a copy of the authorization has been served on the relevant Officer."

(5) Section 28(8), (9) and (10) is repealed.

(6) Section 28(12) is amended by repealing "and be" and substituting "and in the specified form, and must be".

(7) Section 28(14) and (15) is repealed.

6. Chief Electoral Officer to designate some polling stations as special polling stations

Section 32 is amended by adding -

"(2A) The Chief Electoral Officer may, for the purposes of subsection (1), designate as a special polling station any place which has been designated as a polling station under section 31."

7. Chief Electoral Officer to appoint Presiding Officer for each polling station

(1) Section 37 is amended, in the heading, by repealing "appoint Presiding Officer" and substituting "appoint or remove Presiding Officers, etc.".

(2) Section 37 is amended by adding -

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

8. Presiding Officer to exhibit at polling station notice providing information for the guidance of electors

Section 42 is amended by adding -

"(1A) The Presiding Officer of a small polling station or a special polling station must ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station or special polling station, as the case may be, is exhibited outside the polling station concerned.".

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

(1) Section 43 is amended by adding -

"(8A) A Returning Officer may perform any act which that Officer is required or authorized to perform under subsections (6), (7) and (8) through a Presiding Officer."

(2) Section 43(13)(ca) is amended by repealing "votes," and substituting "votes".

(3) Section 43(13)(cb)(ii) is repealed and the following substituted -

"(ii) makes direct reference to -

(A) a body any member of which is standing as a candidate in the election; or

(B) a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or".

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

(1) Section 44(1)(ca) is amended by repealing "votes," and substituting "votes".

(2) Section 44(1)(cb)(ii) is repealed and the following substituted -

"(ii) makes direct reference to -

(A) a body any member of which is standing as a candidate in the election; or

(B) a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or".

(3) Section 44(4) is amended by repealing "area" and substituting "zone".

11. Who may enter or be present at a polling station

(1) Section 47(4) is amended -

(a) in paragraph (e), in the Chinese text, by repealing "當值" and substituting "執勤";

(b) in paragraph (g), by repealing "or";

(c) in paragraph (h), by repealing the full stop and substituting "; or";

(d) by adding -

"(i) public officers on duty at the polling station.".

(2) Section 47(13) is repealed and the following substituted -

"(13) If a person who is accompanied by a child arrives at a polling station for the purpose of voting, the Presiding Officer may permit the child to enter the polling station if that Officer considers that -

(a) the child should not be left unattended while the person is in the polling station; and

(b) the child will not disturb or cause inconvenience to any person in the polling station."

12. What constitutes an offence at a polling station

(1) Section 48(1) is amended by repealing "Deputy Presiding Officer or Assistant Presiding Officer" and substituting "Deputy Presiding Officer, Assistant Presiding Officer or any polling officer".

(2) Section 48(5)(b) is repealed and the following substituted -

"(b) makes direct reference to -

(i) a body any member of which is standing as a candidate in the election; or

(ii) a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election,".

(3) Section 48(6)(h) is amended, in the Chinese text, by repealing "當值" and substituting "執勤".

(4) Section 48(6)(i) is amended, in the Chinese text, by repealing "當值" and substituting "執勤".

(5) Section 48(7) is amended by repealing "this section" and substituting "subsection (1), (3), (4) or (5)".

(6) Section 48 is amended by adding -

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

13. Form of ballot paper and order of appearance of names of candidates on ballot papers

(1) Section 52 is amended by adding -

"(1A) The Chief Electoral Officer may modify the layout of the form of a ballot paper prescribed in Schedule 2 to incorporate particulars relating to candidates to be printed on a ballot paper in accordance with the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541 sub. leg. M)."

(2) Section 52(7) is amended by adding -

"(aa) insofar as may be applicable to the candidate, the particulars specified in the Schedule to the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541 sub. leg. M);"

14. Section substituted

Section 60 is repealed and the following substituted -

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

(1) Subject to subsection (2) and section 56A, if a person ("the first-mentioned person") representing himself or herself to be a particular elector applies for a ballot paper after a person has been issued with a ballot paper 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; and
- (b) the first-mentioned person answers the appropriate questions set out in section 54 to the satisfaction of the Presiding Officer."

**15. Steps to be taken at the close of the poll:
a polling station which is not a small
polling station or a special
polling station**

Section 63(1A) is amended by repealing "candidate and an election agent and a counting agent" and substituting "candidate, and an election agent, a counting agent and a polling agent".

**16. Steps to be taken at the close of the poll: a small
polling station or a special polling station**

Section 63A(3) is amended by repealing "and the sealed packets" and substituting ", the sealed packets and the ballot paper accounts prepared by that Officer".

17. Candidates may appoint counting agents

(1) Section 66(8) is amended by repealing "If the appointment" and substituting "Subject to subsection (10), if the appointment".

(2) Section 66(10) is amended by adding "to the Presiding Officer" after "it must be given".

18. Chief Electoral Officer to appoint counting officers

(1) Section 67 is amended, in the heading, by adding "**or remove**" after "**appoint**".

(2) Section 67 is amended by adding -

"(4) The Chief Electoral Officer may, at any time, with reasonable cause revoke the appointment of any counting officer."

19. Who may be present at the counting of votes

(1) Section 68(1)(f) is amended, in the Chinese text, by repealing "當值" and substituting "執勤".

(2) Section 68(1)(g) is amended, in the Chinese text, by repealing "當值" and substituting "執勤".

20. Counting of votes

Section 76(5)(a)(i) is amended, in the Chinese text, by repealing "可能藉此" and substituting "藉此可能".

21. Ballot papers which are not to be counted when counting the votes

(1) Section 78 is amended by repealing the heading and substituting "**Votes recorded on invalid ballot papers not to be counted**".

(2) Section 78(1) is amended by repealing "the following ballot papers are" and substituting "a ballot paper of any of the following descriptions is not to be regarded as valid and the vote recorded on the ballot paper is".

(3) Section 78(1)(a) is amended by repealing "the Presiding Officer considers that".

(4) Section 78(1)(d) is amended by repealing "is unused" and substituting "has the words "未用" and "UNUSED" endorsed on the front of it".

(5) Section 78(1)(h) is amended by repealing "or" and substituting "and".

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

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

- (a) may inspect a ballot paper referred to in subsection (1)(b), (c), (d), (f), (g) or (i); but
- (b) is not entitled to make representations to the Presiding Officer concerning the ballot paper."

22. Presiding Officer to make decisions on questionable ballot papers

(1) Section 79(1) is amended by repealing everything after "the counting zone," and substituting -

"may -

- (a) inspect the ballot paper; and
- (b) make representations to the Presiding Officer concerning the ballot paper."

(2) Section 79(2)(b)(i) is amended, in the Chinese text, by repealing "可能藉此" and substituting "藉此可能".

(3) Section 79(4) is amended by repealing "a candidate or an election agent" and substituting "a candidate, an election agent or a counting agent".

(4) Section 79(5) is amended by repealing "a candidate or an election agent" and substituting "a candidate, an election agent or a counting agent".

(5) Section 79(6)(a) is amended, in the Chinese text, by repealing "可能藉此" and substituting "藉此可能".

(6) Section 79(6)(d) is amended by repealing "unused" and substituting "endorsed with the words "未用" and "UNUSED"".

23. Returning Officer to declare election result

Section 81(2) is amended by repealing "declaring a successful candidate at an election to be elected, it comes to the knowledge" and substituting "a successful candidate at an election is declared to be elected, it is proved to the satisfaction".

24. Returning Officer may perform functions through Assistant Returning Officers and Presiding Officers

(1) Section 90 is amended, in the heading, by repealing "**and Presiding Officers**".

(2) Section 90(1A) is repealed.

25. Electoral Officers, candidates and agents to make declaration of secrecy

Section 93(5) is amended, in the Chinese text, by repealing "當值" and substituting "執勤".

26. Enforcement of provisions as to secrecy

Section 94(10) is amended by repealing "3 months" and substituting "6 months".

27. Procedure after election proceedings are terminated

Section 95(2) is repealed and the following substituted -

"(2) If, on the date of the election for a constituency and before the close of polling, proof is given to the satisfaction of the Returning Officer of the death of a candidate or the disqualification of a candidate for the constituency, which was the reason for the termination of the relevant election proceedings, that Officer must direct that the poll for the constituency be abandoned."

28. Procedure in case of death or disqualification of candidate after close of poll

Section 96(1) is repealed and the following substituted -

"(1) If the death of a candidate or the disqualification of a candidate from being elected is proved to the satisfaction of the Returning Officer after the close of polling for the constituency concerned but before the declaration of the result of the election, the Returning Officer must direct that the counting of the votes for the constituency is to begin or continue, as the case may be, as if the death or disqualification had not occurred."

29. Election advertisements

Section 103(15) is amended by adding -

"(aa) appearing on a local newspaper within the meaning, and registered under section 7, of the Registration of Local Newspapers Ordinance (Cap. 268);".

30. Schedule 2 substituted

Schedule 2 is repealed and the following substituted -

"SCHEDULE 2 [s. 52]

FORM OF BALLOT PAPER FOR AN ORDINARY
ELECTION/BY-ELECTION

存根 COUNTERFOIL	(編號) (Serial Number)
<<選舉管理委員會(選舉程序)(區議會)規例>> ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (DISTRICT COUNCILS) REGULATION 區議會*一般選舉 / 補選 *(區議會名稱) *(選區名稱) DISTRICT COUNCILS *ORDINARY ELECTION / BY-ELECTION *(NAME OF DISTRICT COUNCIL) *(NAME OF CONSTITUENCY) *(選舉日期) *(date of election)	
選 票 BALLOT PAPER <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-top: 10px;"> #(代號) #(Code) </div>	
只可投票選一名候選人 VOTE FOR ONE CANDIDATE ONLY	
請用投票站提供的印章在所選候選人姓名左邊的圓圈內蓋上“✓”號。 Use the chop provided at the polling station to stamp "✓" in the circle opposite the name of candidate of your choice.	
<div style="border: 1px solid black; padding: 5px;"> <p style="margin: 0;">1</p> <p style="font-size: small; margin: 0;">*訂明團體的登記名稱及登記標誌及訂明人士的登記標誌 *Registered names and registered emblems of prescribed bodies and registered emblem of prescribed person</p> <p style="font-size: small; margin: 0;">*獨立候選人 *Independent Candidate</p> <p style="font-size: small; margin: 0;">*無黨派候選人 *Non-affiliated Candidate</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin-right: 10px;"></div> <p style="font-size: small; margin: 0;">+*(候選人 提名公告上顯示的候選人姓名) +*(Name of candidate as shown in Notice of Nominations)</p> </div> </div>	候選人照片 Photograph of Candidate
<div style="border: 1px solid black; padding: 5px; height: 40px;"> <p style="font-size: 2em; margin: 0;">2</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin-right: 10px;"></div> </div> </div>	
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A code will be assigned to each constituency. Only the appropriate code will be printed.

* Only the appropriate information will be printed.

+ Address of the candidate to be included if required under section 52(7)(b).".

Made this 7th day of May 2007.

The Hon. Mr. Justice PANG Kin-kee
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) (District Councils) Regulation (Cap. 541 sub. leg. F) ("the principal Regulation"). The principal purpose of the amendments is to align the provisions for District Council elections, where appropriate, with those for other elections. This Regulation also includes amendments consequential upon the amendments made under the Particulars Relating to Candidates on Ballot Papers (Legislative Council) (Amendment) Regulation 2007 (L.N. 47 of 2007).

2. Section 1 provides for the commencement of this Regulation.

3. Section 2 amends section 2(1) of the principal Regulation by -

(a) replacing the definition of "political body" with the definition of "prescribed body"; and

(b) adding, in the context of a registered name or a registered emblem, the definition of "registered".

4. Section 3 amends section 24 of the principal Regulation so that the Returning Officer must notify the Chief Electoral Officer if the death of a candidate is proved to the Returning Officer's satisfaction before the election day but after that Officer has decided that the candidate is validly nominated. At present, the Returning Officer is required to do so if the death of the candidate comes to his knowledge.

5. Section 4 amends section 25 of the principal Regulation so that the Returning Officer must notify the Chief Electoral Officer if the disqualification of a candidate is proved to the Returning Officer's satisfaction before the election day but after that Officer has decided that the candidate is validly nominated. At present, the Returning Officer is required to do so if the disqualification of the candidate comes to his knowledge.

6. Section 5 amends section 28 of the principal Regulation to -

(a) provide that an authorization of a person to incur election expenses on a candidate's behalf must be in the form specified by the Electoral Affairs Commission, and be served on the Returning Officer or the Chief Electoral Officer (if no Returning Officer has been appointed);

(b) provide for the mode of service of the authorization;

(c) provide for the time upon which the authorization is regarded as being effective for any purpose related to the relevant election;

(d) provide that a notice of revocation of the authorization must be in the form specified by the Electoral Affairs Commission; and

(e) repeal various provisions which are outdated.

7. Section 6 amends section 32 of the principal Regulation 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 electors.

8. Section 7 amends section 37 of the principal Regulation to provide that the Chief Electoral Officer may at any time with reasonable cause revoke the appointment of any Presiding Officer or polling officer.

9. Section 8 amends section 42 of the principal Regulation to require the Presiding Officer of a small polling station or a special polling station to ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station or special polling station, as the case may be, is exhibited outside the polling station concerned.

10. Section 9 amends section 43 of the principal Regulation to -

- (a) provide that the Returning Officer may perform any act which that Officer is required or authorized to perform under section 43(6), (7) and (8) of the principal Regulation through a Presiding Officer;
- (b) provide for a technical amendment to section 43(13)(ca) of the principal Regulation; and
- (c) replace the reference to "a political body in Hong Kong" in section 43(13)(cb)(ii) of the principal Regulation with the reference to "a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election".

11. Section 10 provides for technical amendments to section 44(1)(ca) and (4) of the principal Regulation, and amends section 44(1)(cb)(ii) of the principal Regulation by replacing the reference to "a political body in Hong Kong" with the reference to "a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election".

12. Section 11 amends section 47 of the principal Regulation to -

(a) provide that public officers on duty at a polling station is included in the category of persons who may not be excluded from the polling station by the Presiding Officer;

(b) provide that if a person who is accompanied by a child arrives at a polling station for the purpose of voting, the Presiding Officer may permit the child to enter the polling station if, in addition to considering that the child should not be left unattended while the person is in the polling station, that Officer also considers that the child will not disturb or cause inconvenience to any person in the polling station; and

(c) provide for a technical amendment to the Chinese text.

13. Section 12 amends section 48 of the principal Regulation to -

(a) provide that, in addition to the Returning Officer, Assistant Returning Officer, Presiding Officer, Deputy Presiding Officer and Assistant Presiding

Officer, a polling officer may also direct a person not to communicate with an elector, or not to use any device for electronic communication, on polling day within a polling station;

- (b) replace the reference to "a political body in Hong Kong" in section 48(5)(b) of the principal Regulation with the reference to "a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election";
- (c) increase the maximum term of imprisonment from 3 months to 6 months 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; and
- (d) provide for technical amendments to the Chinese text.

14. Section 13 amends section 52 of the principal Regulation to -

- (a) empower the Chief Electoral Officer to modify the layout of the form of a ballot paper prescribed in Schedule 2 to the principal Regulation so as to incorporate certain particulars relating to candidates to be printed on a ballot paper; and
- (b) provide that a ballot paper is to contain the particulars specified in the Schedule to the Particulars Relating to Candidates on Ballot Papers

(Legislative Council and District Councils)

Regulation (Cap. 541 sub. leg. M).

15. Section 14 amends section 60 of the principal Regulation to provide clearly that if a person ("the first-mentioned person") representing himself to be a particular elector applies for a ballot paper after a person has been issued with a ballot paper on the basis that he is that first-mentioned person, the Presiding Officer may issue a ballot paper marked "重複" and "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; and

(b) the first-mentioned person answers the appropriate questions to the satisfaction of the Presiding Officer.

16. Section 15 amends section 63 of the principal Regulation to provide that in addition to a candidate, an election agent and a counting agent, a polling agent is also allowed to stay in a polling station while it is closed for the preparation for the counting of votes.

17. Section 16 amends section 63A of the principal Regulation so that after the close of the poll at a small polling station or a special polling station, the Presiding Officer of the small polling station or special polling station is required to deliver, in addition to the ballot box or boxes and the sealed packets, the

ballot paper accounts prepared by that Officer to the Presiding Officer of the main counting station.

18. Section 17 amends section 66 of the principal Regulation to provide clearly that the notice of revocation of the appointment of a counting agent, if given on polling day, shall be given by the candidate, or his election agent, in person to the Presiding Officer only.

19. Section 18 amends section 67 of the principal Regulation to provide that the Chief Electoral Officer may at any time with reasonable cause revoke the appointment of any counting officer.

20. Section 19 provides for technical amendments to the Chinese text of section 68 of the principal Regulation.

21. Section 20 provides for a technical amendment to the Chinese text of section 76(5)(a)(i) of the principal Regulation.

22. Section 21 amends section 78 of the principal Regulation to -

(a) elaborate that unused ballot papers mean those ballot papers which have the words "未用" and "UNUSED" endorsed on the front of them;

(b) specify that 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 concerning those ballot papers; and

(c) provide for technical amendments.

23. Section 22 amends section 79 of the principal Regulation to -

- (a) provide that if the Presiding Officer decides a questionable ballot paper is not to be counted, in addition to a candidate and an election agent, a counting agent may also object to the decision;
- (b) elaborate that unused ballot papers mean those ballot papers which are endorsed with the words "未用" and "UNUSED"; and
- (c) provide for technical amendments.

24. Section 23 amends section 81 of the principal Regulation so that the Returning Officer must not declare a successful candidate at an election to be elected and must declare the election to have failed if, before the candidate is declared to be elected, it is proved to the satisfaction of the Returning Officer that the candidate has died or is disqualified. At present, the Returning Officer is required to do so if the death or disqualification of the candidate comes to his knowledge.

25. Section 24 amends section 90 of the principal Regulation by removing the provision that the Returning Officer may perform any act which that Officer is required or authorized to perform under section 43(7) and (8) of the principal Regulation through the Presiding Officer. The provision, as amended, is included under section 43 of the principal Regulation as subsection (8A).

26. Section 25 provides for a technical amendment to the Chinese text of section 93(5) of the principal Regulation.

27. Section 26 amends section 94 of the principal Regulation to increase the maximum term of imprisonment for violation of secrecy as to voting from 3 months to 6 months.

28. Section 27 amends section 95 of the principal Regulation so that the Returning Officer must direct that the poll for a constituency be abandoned if, on the date of the election for the constituency and before the close of polling, proof is given to the satisfaction of that Officer of the death of a candidate or the disqualification of a candidate for the constituency, which was the reason for the termination of the relevant election proceedings. At present, the Returning Officer is required to do so if the death or disqualification of the candidate comes to his knowledge.

29. Section 28 amends section 96 of the principal Regulation so that the Returning Officer must direct that the counting of the votes for a constituency is to begin or continue if the death of a candidate or the disqualification of a candidate from being elected is proved to the satisfaction of that Officer after the close of polling for the constituency but before the declaration of the result of the election. At present, the Returning Officer is required to do so if the death or disqualification of the candidate comes to his knowledge.

30. Section 29 amends section 103 of the principal Regulation to provide that the numbering requirements under section 103(1) and (2) of the principal Regulation does not apply to an election advertisement appearing on a local newspaper registered under

section 7 of the Registration of Local Newspapers Ordinance (Cap. 268).

31. Section 30 amends Schedule 2 to the principal Regulation by replacing the prescribed form of a ballot paper for a District Council ordinary election or by-election with a new one.

**Main Amendments to align the electoral procedures for DC elections
with those for LegCo, ECSS and CE elections**

Death or disqualification of a candidate

1. Sections 24, 25, 81, 95 and 96 of the principal Regulation are amended to provide that the Returning Officer (“RO”) must take certain follow-up actions appropriate to the time and circumstances during the election process, when the death or disqualification of a candidate *is proved to that Officer's satisfaction*. The possibilities include notifying the Chief Electoral Officer (“CEO”), declaring the election to have failed, directing the poll for a constituency be abandoned or directing the counting of the votes for the constituency is to begin or continue. At present, the RO is required to take the follow-up actions if the death or disqualification of the candidate *comes to his knowledge*.

Appointment of election expense agent

2. Section 28 of the principal Regulation is amended to provide that a candidate must serve a copy of the authorisation of an election expense agent on the RO or the CEO (if the RO has not been appointed), and that the authorisation is regarded as being effective only when a copy of the authorization has been served on the RO or the CEO as appropriate.

Designating polling stations as special polling stations

3. Section 32 of the principal Regulation is amended to empower the CEO to designate the same place as a special polling station for electors with disability, and at the same time a polling station for use by other electors.

Revoking appointment of staff assisting in the conduct of elections

4. Sections 37 and 67 of the principal Regulation are amended to make clear that the power of the CEO to appoint Presiding Officers (“PROs”), polling officers (“POs”) and counting officers also includes the power to revoke the appointments with reasonable cause.

Order within the polling stations

5. Section 43 of the principal Regulation is amended to empower the RO to authorise a PRO to vary the no canvassing zone or the no staying zone of a polling station.
6. Section 47 of the principal Regulation is amended to provide that the PRO may not exclude, apart from the CEO, ROs, Assistant Returning Officers (“AROs”), POs, etc, other public officers on duty at the polling stations from the polling stations.
7. Section 47 of the principal Regulation is amended to provide that if a person who is accompanied by a child arrives at a polling station for the purpose of voting, the PRO may permit the child to enter the polling station if, in addition to considering that the child should not be left unattended while the person is inside the polling station, that Officer also considers that the child will not disturb or cause inconvenience to any person in the polling station.
8. Section 48 of the principal Regulation is amended to provide that in addition to a number of officers comprising ROs, AROs, PROs, Deputy PROs and Assistant PROs, POs may also direct a person not to communicate with electors or not to use any device for electronic communication within a polling station on polling day.
9. Section 48 of the principal Regulation is amended to increase the maximum term of imprisonment for unauthorized filming, photographing, audio/video recording within a polling station from three months to six months.

Counting of votes

10. Section 78 of the principal Regulation is amended to provide that candidates, their election or counting agents may inspect certain kinds of ballot papers which are clearly invalid by their nature (i.e. tendered, spoilt, unused or unmarked ballot papers, ballot papers not marked with the “✓” chop provided at the polling station or containing votes for more than one candidate), but are not entitled to make representations to the PROs concerning such ballot papers.

11. Section 79 of the principal Regulation is amended to provide that if a PRO decides a questionable ballot paper is not to be counted, in addition to the candidates and their election agents, their counting agents may also object to the decision.

Secrecy of vote

12. Section 94 of the principal Regulation is amended to increase the maximum term of imprisonment for violation of secrecy of vote from three months to six months.

Consequential amendments arising from the Particulars Relating to Candidates on Ballot Papers (LegCo) (Amendment) Regulation 2007

Interpretations

1. The definition of “political body” in section 2 of the principal Regulation is repealed and substituted by the definition of “prescribed body”, the meaning of which is given in the Particulars Relating to Candidates on Ballot Papers (LegCo and DCs) Regulation (Cap. 541M).

Order within the polling stations

2. Sections 43, 44 and 48 of the principal Regulation are amended to replace the reference to “a political body in Hong Kong” with the reference to “a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election”.

Form of ballot papers

3. Section 52 of the principal Regulation is amended to:
 - (a) empower the Chief Electoral Officer to modify the layout of the form of a ballot paper prescribed in Schedule 2 to the principal Regulation so as to incorporate certain particulars relating to candidates to be printed on a ballot paper; and
 - (b) provide that insofar as may be applicable to the candidate, a ballot paper is to contain the particulars specified in the Schedule to the Particulars Relating to Candidates on Ballot Papers (LegCo and DCs) Regulation (Cap. 541M).

4. The form of the ballot paper as specified in Schedule 2 to the principal Regulation is updated to include the printing of the names, the abbreviations of the names and the emblems of prescribed bodies, the personal emblems and the photographs of candidates, and the words “Independent Candidate” or “Non-affiliated Candidate”.