

Legislative Council Panel on Constitutional Affairs
Amendments to the Electoral Affairs Commission
(Electoral Procedure) (Legislative Council) Regulation

Purpose

This paper informs Members of the proposed amendments to the Electoral Affairs Commission (“EAC”) (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) (“the Regulation”) in preparation for the 2008 Legislative Council (“LegCo”) election.

Background

2. The Regulation provides for the detailed electoral procedures for LegCo elections. To prepare for the 2008 LegCo election, we propose to amend certain provisions in the Regulation to tally the electoral procedures, where appropriate, with those of the Election Committee Subsector, Chief Executive and District Council (“DC”) elections.

Proposed Amendments

3. Major amendments to the Regulation are outlined in the following paragraphs.

Acts of the Returning Officer performed through the Presiding Officer

4. At present, under the Regulation, the Returning Officer (“RO”):
- (a) may vary the No Canvassing Zone (“NCZ”) and the No Staying Zone (“NSZ”);

- (b) must display a notice of the NCZ and NSZ on the polling station at or near the polling station; and
- (c) must display a notice of the NCZ and NSZ at or near the polling station if they are varied after the display of the notice at (b) above.

5. Currently the RO may perform the acts in paragraphs 4(a) and 4(b) through the Presiding Officer (“PRO”). We propose to amend the Regulation such that he may also perform the act in paragraph 4(c) through the PRO. This is to tally with the electoral procedures for the DC elections.

Appointment of Polling / Counting Officers

6. Regarding the appointment of officers working at the polling / counting stations, we propose to amend the Regulation to make clear that the power of the Chief Electoral Officer to revoke the appointment of such officers is to be exercised with reasonable cause. This is to tally with the electoral procedures for the other elections.

Conversion of Polling Stations into Counting Stations

7. We propose to amend the Regulation to provide that in addition to the candidates, their election agents and counting agents, polling agents may also stay in the polling station while it is converted into a counting station at the close of poll. This is to tally with the electoral procedures for the DC elections.

Counting of Votes

8. The polling-cum-counting arrangement will be adopted for the counting of geographical constituency (“GC”) votes for the 2008 LegCo election. Some of the polling-cum-counting stations will be set up in places (e.g. schools) which need to be returned to the management of the venue in the early morning following the polling day. In case the counting of votes for certain GCs extends into the morning following the polling day, we need

to transfer the relevant election materials (e.g. ballot papers, ballot boxes, etc.) to another counting station for the counting to continue to take place. We propose to amend the Regulation such that when it appears to the EAC that the counting station will no longer be available or suitable for completing the counting of votes, the EAC may direct the PRO to take such necessary and reasonable steps to cease the counting of votes, and in the presence of persons present within the counting station, transfer the relevant election materials to another counting station for the counting to continue to take place.

9. To tally with the electoral procedures for other elections, we propose to amend the Regulation to require the RO to give a notice in writing before the polling day to the candidates for a contested geographical constituency, in addition to those for a contested functional constituency, of the place(s) for counting of votes.

10. In addition, we propose to amend the Regulation to allow a candidate, an election agent or a counting agent to inspect ballot papers which are clearly invalid by their nature (e.g. tendered, spoilt, unused, unmarked, not marked with a tick (✓) or which contain votes for more than one candidate). However, they remain not entitled to make representations to the RO or the PRO concerning such ballot papers. The amendment tallies with the electoral procedures for other elections.

11. Currently, a candidate or an election agent may inspect a questionable ballot paper and make representations or object to the decision of the RO or the PRO. We propose to amend the Regulation to allow a counting agent also to inspect a questionable ballot paper and to make representations or to raise objections. The amendment tallies with the electoral procedures for other elections.

Miscellaneous and Supplemental Provisions

12. We propose to amend the Regulation to make it clear that where the RO has terminated the proceedings for the election under section 42C or 46A(1) of the Legislative Council Ordinance (Cap. 542) upon proof of the

death or the disqualification of a candidate given to him on the date of the election and before the close of polling, in directing that the poll be abandoned under section 97(2) of the Regulation, such proof would not need to be given to the RO again.

13. We also propose to amend the Regulation to the effect that the EAC may specify the form of the election return for the purposes of section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

14. Regarding the display of election advertisement, we propose to amend the Regulation to provide that a candidate must, before he or she displays such advertisement, deposit with the RO a copy of the permission or other authorization given or obtained for the purposes of section 104A(1) of the Public Health and Municipal Services Ordinance (Cap. 132). The amendment serves to clarify that the distribution or otherwise use of an election advertisement is not regulated in this regard, because the permission to be granted under section 104A(1) of the Public Health and Municipal Services Ordinance only relates to the displaying or affixing of a bill or poster on any private land or Government land.

Legislative Timetable

15. We plan to introduce the Amendment Regulation into the LegCo in March 2008.

Advice Sought

16. Members are invited to note the proposed amendments to the Regulation relating to the 2008 LegCo Election as outlined above.

Constitutional and Mainland Affairs Bureau
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