

**L.N. 66 of 2008**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE) (LEGISLATIVE COUNCIL)  
(AMENDMENT) REGULATION 2008**

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**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE) (LEGISLATIVE COUNCIL)  
(AMENDMENT) REGULATION 2008**

(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 June 2008.

**2. Returning Officer to notify or declare  
if a validly nominated candidate for  
a GC is proved to have died**

Section 22A of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) is amended, in the heading, by repealing “**or declare**” and substituting “**and declare**”.

**3. Returning Officer to notify or declare  
if a validly nominated candidate for  
a GC is proved to be disqualified**

(1) Section 22B is amended, in the heading, by repealing “**or declare**” and substituting “**and declare**”.

(2) Section 22B(3) is amended, in the English text, by repealing “relate” and substituting “relates”.

**4. A candidate or a list of candidates may  
appoint election agent**

Section 23(8) is amended by repealing “identity document number” and substituting “identity card number”.

**5. Authorization of election expense agent  
to incur election expenses at or in  
connection with an election**

(1) Section 25(10) is repealed and the following substituted—

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

(2) Section 25(14) is amended by repealing everything after “has been revoked,” and substituting—

“a written notice of the revocation must be served as soon as possible—

(a) on the Returning Officer; or

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

(3) Section 25 is amended by adding—

“(15A) Service of the notice of revocation may be effected by delivery by hand, by post or by facsimile transmission.”.

#### **6. Chief Electoral Officer to designate polling stations and counting stations**

Section 28 is amended, in the heading, by repealing “**and counting stations**” and substituting “**, counting stations, small polling stations and main counting stations**”.

#### **7. Chief Electoral Officer to appoint or remove Presiding Officer for each polling station**

(1) Section 34 is amended, in the heading, by repealing “**Presiding Officer**” and substituting “**Presiding Officers, etc.**”.

(2) Section 34(3) is amended by repealing “at any time” and substituting “, at any time, with reasonable cause”.

(3) Section 34 is amended by adding—

“(4) Where the same place is designated as both a polling station and a counting station under section 28(1A), the Presiding Officer of the polling station is to be regarded as the Presiding Officer of the counting station.”.

#### **8. Returning Officer to determine no canvassing zones and no staying zones**

(1) Section 40 is amended by adding—

“(11A) A Returning Officer may perform any act which that Officer is required or authorized to perform under subsections (9), (10) and (11) through a Presiding Officer.”.

(2) Section 40(16)(aa) is amended by repealing the comma.

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

Section 41(1)(aa) is amended by repealing the comma.

**10. Candidates may appoint polling agents**

Section 42(11) is amended by repealing “identity document number” and substituting “identity card number”.

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

(1) Section 44(4)(e) is amended, in the Chinese text, by repealing “當值” and substituting “執勤”.

(2) Section 44(4)(i) is amended, in the Chinese text, by repealing “當值” and substituting “執勤”.

**12. What constitutes an offence at a polling station**

(1) Section 45(6)(h) is amended, in the Chinese text, by repealing “當值” and substituting “執勤”.

(2) Section 45(6)(i) is amended, in the Chinese text, by repealing “當值” and substituting “執勤”.

**13. Form of ballot papers and order of appearance of lists or names of candidates on ballot papers**

(1) Section 49(4) is amended by repealing “any Form in Schedule 3” and substituting “the form of any ballot paper prescribed in Schedule 3”.

(2) Section 49(13)(aa) is repealed and the following substituted—  
“(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. A candidate or election agent may challenge a person who has applied for a ballot paper or who has voted**

Section 52 is amended, in the heading, by repealing “**election agent**” and substituting “**election agent or polling agent**”.

**15. When a person is to be issued with a ballot paper marked “重複” and “TENDERED”**

(1) Section 60(1) is amended—

(a) by repealing “another person” and substituting “a person”;

(b) in the English text, by repealing “that first-mentioned person” and substituting “the first-mentioned person”.

(2) Section 60(2)(a) is amended by repealing “earlier”.

**16. Steps to be taken at the close of the poll: a polling station which is not a small 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 polling agent and a counting agent”.

**17. Returning Officer and Presiding Officer to give notice of time and place of counting of votes to candidates**

(1) Section 65(3) is amended by repealing “functional” where it twice appears.

(2) Section 65 is amended by adding—

“(7A) Where the Commission has given a direction under section 75A that the counting of votes cast at a polling station in respect of a geographical constituency is to take place or continue to take place at a counting station specified by the Chief Electoral Officer, the Returning Officer must give notice, which may be oral or in writing, to each candidate for the constituency of the time and place at which the counting is to take place or continue to take place.”.

(3) Section 65 is amended by adding—

“(8A) A notice required to be given under this section to a candidate may be given, where the candidate is on a multiple candidates list, to the candidate ranking first in priority on the list.”.

**18. Candidates may appoint counting agents**

Section 66(7) is amended by repealing “identity document number” and substituting “identity card number”.

**19. Chief Electoral Officer to appoint or revoke counting officers**

Section 67(4) is amended by repealing “at any time” and substituting “, at any time, with reasonable cause”.

**20. Who may be present at the counting of the 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”.

(3) Section 68(4) is amended by repealing “identity document” and substituting “identity card”.

**21. Counting of votes for geographical constituencies**

Section 75(7)(a)(i) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.

**22. Section added**

The following is added—

**“75A. Special arrangements for counting of votes for geographical constituencies**

(1) If at any time it appears to the Commission that a counting station (“first counting station”) assigned for the counting of votes cast at a polling station (“polling station concerned”) in respect of a geographical constituency is no longer available or suitable for the counting to take place or continue to take place, the Commission may direct that the counting is to take place or continue to take place at another counting station (“new counting station”) specified by the Chief Electoral Officer.

(2) Subsection (1) does not apply if it appears to the Commission that the first counting station is no longer available or suitable for the counting of votes to take place or continue to take place because of any of the occurrences specified in section 2(3) of Schedule 2.

(3) Where the Commission gives a direction under subsection (1), the Presiding Officer of the first counting station (“first Presiding Officer”) must arrange the ballot boxes (whether opened or un-opened) and receptacles, if any, together with the ballot papers (whether counted or not), any un-issued ballot papers, tendered ballot papers, ballot paper account, verification of a ballot paper account or re-verification of a ballot paper account, and any other relevant election materials to be transferred to the new counting station.

(4) Any person who may be present at the first counting station or polling station concerned under this Regulation may also be present with the first Presiding Officer when that Officer makes any arrangement under subsection (3).

(5) The Chief Electoral Officer may direct any Presiding Officer to act in place of the first Presiding Officer for the purposes of the counting or continuing of the counting of votes as well as all other duties or powers the first Presiding Officer would have to perform or exercise under this Regulation had he not been replaced.

(6) Subject to subsection (8), for the purposes of this Regulation—

(a) the new counting station is to be regarded as the first counting station; and

(b) the counting zone of the new counting station is to be regarded as the counting zone of the first counting station.

(7) If at the new counting station the counting of votes cast at a polling station other than the polling station concerned is also to take place or taking place, the Chief Electoral Officer may assign within the new counting station an area for the counting or continuing of the counting of votes cast at each of the polling stations.

(8) For the purposes of this Regulation—

(a) an area assigned under subsection (7) for the counting or continuing of the counting of votes cast at a polling station is to be regarded as the counting station originally assigned for the counting of votes cast at the polling station; and

(b) the counting zone in the area mentioned in paragraph (a) is to be regarded as the counting zone of the counting station mentioned in that paragraph.”.

### **23. Counting of votes for special functional constituencies**

Section 76(6)(a)(i) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.



## **24. Counting of votes for ordinary functional constituencies**

Section 77(7)(a)(i) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.

## **25. Ballot papers which are not to be regarded as valid when counting the votes**

(1) Section 80 is amended by repealing the heading and substituting “**Votes recorded on invalid ballot papers not to be counted**”.

(2) Section 80(1) is amended by repealing “the following ballot papers are not to be regarded as valid” 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 not to be counted”.

(3) Section 80(1)(a) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.

(4) Section 80(1)(d) is amended by repealing “thereon” and substituting “on the front of it”.

(5) Section 80(1)(i) is amended by repealing “or” and substituting “and”.

(6) Section 80(4) is repealed and the following substituted—

“(4) A candidate, an election agent or a counting agent—

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

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

## **26. Returning Officer or Presiding Officer to make decisions on questionable ballot papers**

(1) Section 81(1) is amended by repealing everything after “the counting zone,” and substituting—

“may—

(a) inspect the ballot paper; and

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

(2) Section 81(2)(b)(i) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.

(3) Section 81(6)(a) is amended, in the Chinese text, by repealing “可能藉此” and substituting “藉此可能”.

(4) Section 81(6)(d) is amended by repealing “unused” and substituting “endorsed with the words “未用” and “UNUSED””.

(5) Section 81(7) is amended—

(a) by repealing “either any one of the candidates or the election agent” and substituting “any one of the candidates, the election agent or the counting agent”;

(b) by repealing “either the candidate or the election agent” and substituting “the candidate, the election agent or the counting agent”.

**27. Returning Officer may perform functions through Assistant Returning Officers, etc.**

(1) Section 92 is amended, in the heading, by repealing “, etc.”.

(2) Section 92(2) is repealed.

**28. Electoral officers, candidates and agents to make declaration of secrecy**

Section 95(5) is amended, in the Chinese text, by repealing “當值” and substituting “執勤”.

**29. Procedure after election proceedings are terminated**

Section 97(2) is repealed and the following substituted—

“(2) If, on the date of the election for a constituency and before the close of the poll for the constituency, a declaration under subsection (1) is made by the Returning Officer in respect of that election, that Officer must direct that the poll be abandoned.”.

**30. Section added**

The following is added—

**“99A. Election return to be lodged in specified form**

The election return required to be lodged under section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in respect of a general election or a by-election must be in the specified form (if any).”.

**31. Election advertisements**

- (1) Section 102(10) is repealed and the following substituted—  
“(10) Before displaying an election advertisement in the form of a bill or poster within the meaning of section 104E of the Public Health and Municipal Services Ordinance (Cap. 132), the candidate must deposit with the Returning Officer a copy of the permission or other authorization obtained for the purposes of section 104A(1) of that Ordinance.”.
- (2) Section 102 is amended by adding—  
“(10A) Before displaying, distributing or otherwise using an election advertisement which is of a kind referred to in section 27(1) or (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the candidate must deposit with the Returning Officer a copy of the consent in writing referred to in that section 27(1) or (2), as the case may be.”.

**32. Postponement and adjournment of general election and by-election**

- (1) Schedule 2 is amended, within the square brackets, by repealing “& 91” and substituting “, 75A & 91”.
- (2) Schedule 2 is amended, in section 2(2), by repealing “referred to in subsection (1), it appears to the Commission that the poll at all the polling stations” and substituting “it appears to the Commission that the poll at all the polling stations, or the count at all the counting stations,”.

Made this 17th day of March 2008.

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) (Legislative Council) Regulation (Cap. 541 sub. leg. D) (“the principal Regulation”). The principal purposes of the amendments are to align the provisions for the Legislative Council election, where appropriate, with those for other elections, and to provide for the arrangement for counting of votes in respect of a geographical constituency at a counting station if that counting station is no longer available or suitable for the counting of votes to take place or continue to take place. Several technical amendments are also provided for in this Regulation.

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

3. Sections 2, 3(1), 6, 7(1), 14, 25(1) and 27(1) amend the heading of sections 22A, 22B, 28, 34, 52, 80 and 92 of the principal Regulation respectively.

4. Sections 3(2), 8(2), 9, 13, 15, 25(2), (4) and (5) and 26(1) and (4) provide for technical amendments to sections 22B(3), 40(16)(aa), 41(1)(aa), 49(4) and (13)(aa), 60(1) and (2)(a), 80(1), (1)(d) and (1)(i) and 81(1) and (6)(d) of the principal Regulation respectively to enhance clarity.

5. Sections 4, 10 and 18 substitute “identity card number” for “identity document number”, and section 20(3) substitutes “identity card” for “identity document”, to align the terminologies used in the principal Regulation.

6. Section 5 amends section 25(10) of the principal Regulation so as to make clear that the service of a copy of the authorization of an election expense agent may be effected by a person other than the relevant candidate. Amendment is also made to section 25 of the principal Regulation so as to make clear that the written notice of revocation of authorization of an election expense agent need not be served by a candidate personally.

7. Section 7(2) amends section 34(3) of the principal Regulation to make clear that the power of the Chief Electoral Officer to revoke the appointment of any Presiding Officer or polling officer is to be exercised with reasonable cause. Section 7(3) amends section 34 of the principal Regulation by making clear that where the same place is designated as both a polling station and a counting station under section 28(1A) of the principal Regulation, the Presiding Officer of the polling station is to be regarded as the Presiding Officer of the counting station.

8. Section 8(1) amends section 40 of the principal Regulation by adding a new section 40(11A) to provide that a Returning Officer may perform any act which he is required or authorized to perform under section 40(9), (10) and (11) of the principal Regulation through a Presiding Officer.

9. Sections 11, 12, 20(1) and (2) and 28 substitute “執勤” for “當值” in the Chinese text of the principal Regulation to align the terminologies used in the Chinese text of legislation for various elections.

10. Section 16 amends section 63(1A) 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.

11. Section 17 amends section 65 of the principal Regulation—

- (a) to provide that, in addition to giving notice in writing to each candidate for a contested functional constituency election of the place at which the counting of votes is to take place, a Returning Officer must also give such notice to each candidate for a contested geographical constituency election;
- (b) to provide that where the Electoral Affairs Commission has given a direction under the new section 75A of the principal Regulation (as mentioned below) that the counting of votes cast at a polling station in respect of a geographical constituency is to take place or continue to take place at a counting station specified by the Chief Electoral Officer, the Returning Officer must give notice to each candidate for the constituency of the time and place at which the counting is to take place or continue to take place; and
- (c) to provide that a notice required to be given under section 65 of the principal Regulation to a candidate may be given, in the case of a candidate on a multiple candidates list, to the candidate ranking first in priority on the list.

12. Section 19 amends section 67(4) of the principal Regulation to make clear that the power of the Chief Electoral Officer to revoke the appointment of any counting officer is to be exercised with reasonable cause.

13. Sections 21, 23, 24, 25(3) and 26(2) and (3) substitute “藉此可能” for “可能藉此” in the Chinese text of the principal Regulation to enhance clarity.

14. Section 22 amends the principal Regulation by adding a new section 75A. Under the new section, if the Electoral Affairs Commission considers that a counting station (“first counting station”) assigned for the counting of votes cast at a polling station (“polling station concerned”) in respect of a geographical constituency is no longer available or suitable (otherwise than by reason of the occurrences specified in section 2(3) of Schedule 2 to the principal Regulation) for the counting to take place or continue to take place, it may direct that the counting is to take place or continue to take place at another counting station (“new counting station”) specified by the Chief Electoral

Officer for the counting of votes to take place or continue to take place. Where such a direction is given, the Presiding Officer of the first counting station (“first Presiding Officer”) must arrange the election materials to be transferred to the new counting station, and any person who may be present at the first counting station or polling station concerned may also be present with the first Presiding Officer when the arrangement is made. Provisions are also made for certain operational matters such as the powers of the Chief Electoral Officer—

- (a) to give direction to any Presiding Officer to act in place of the first Presiding Officer to oversee the counting of votes which takes place or continues to take place under the new section; and
- (b) (if at the new counting station the counting of votes cast at a polling station other than the polling station concerned is also to take place or taking place) to assign within the new counting station an area for the counting or continuing of the counting of votes cast at each of the polling stations.

15. Section 25(6) amends section 80(4) of the principal Regulation to 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 to the Returning Officer or the Presiding Officer concerning those ballot papers.

16. Section 26(5) amends section 81(7) of the principal Regulation to make it align with the other provisions under section 81 of the principal Regulation.

17. Section 27(2) removes the provision that enables the Returning Officer to perform any act which he is required or authorized to perform under section 40(9) and (10) of the principal Regulation through a Presiding Officer. Such provision is reproduced with modification under section 40 of the principal Regulation.

18. Section 29 amends section 97(2) of the principal Regulation to make clear that there is no requirement for further proof of the death or disqualification of a candidate to be given before the Returning Officer directs that the relevant poll be abandoned if the relevant election proceedings have already been terminated owing to the death or disqualification.

19. Section 30 amends the principal Regulation by adding a new section 99A. Under the new section, the election return required to be lodged under section 37 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) in respect of a Legislative Council election must be in the specified form (if any).

20. Section 31 amends section 102(10) of the principal Regulation to make clear that the requirement for depositing a copy of the permission or other authorization obtained for the purposes of section 104A(1) of the Public

Health and Municipal Services Ordinance (Cap. 132) relates only to the display of an election advertisement in the form of a bill or poster. At present, a candidate must do so as well in case an election advertisement is to be distributed or otherwise used.

21. Section 32 amends section 2(2) of Schedule 2 to the principal Regulation to make clear that if, at any time during a poll or count in respect of an election, the Electoral Affairs Commission considers that the count at all the counting stations for any constituency is likely to be obstructed, disrupted, undermined or seriously affected by any of the specified occurrences, the Commission may adjourn the count at all the counting stations for that constituency.