

**Subcommittee on Subsidiary Legislation  
Relating to Voting by Imprisoned Persons**

**Proposed Amendments to the Amendment Regulations**

**INTRODUCTION**

This paper sets out the proposed amendments to the amendment regulations relating to voting by imprisoned persons pursuant to the discussion at the meeting of the Subcommittee on 2 September 2009 (“the meeting”).

**Section 5 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009**

2. Section 5 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 (“section 5”) proposes to add, inter alia, a subsection 28(1)(c) to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). The proposed subsection stipulates that the Chief Electoral Officer (“CEO”) must designate, by notice published in the Gazette, one or more places as a ballot paper sorting station (“BPSS”) or BPSSs for sorting geographical constituency (“GC”) ballot papers received from dedicated polling stations **in a general election**.

3. During the section-by-section examination of the amendment regulations at the meeting, a Member pointed out that a BPSS might also be required in certain scenarios other than a general election, for example, when by-elections for more than one GCs are held on the same day.

4. In a Legislative Council general election, as GC ballot papers are cast in respect of all the five GCs, it is therefore necessary to set up one or more BPSSs to sort the ballot papers received from the dedicated polling stations before the sorted ballot papers are transported to the relevant

counting stations for counting. As for by-elections, they are normally held in relation to a single constituency and hence there is no need to sort the ballot papers prior to the counting. Section 5 of the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”) stipulates, inter alia, that the Electoral Affairs Commission (“EAC”) may do such other incidental act or thing or exercise such powers as it considers necessary or expedient for the performance of its functions under the EACO or any other Ordinance. Therefore, the EAC is empowered to set up BPSS(s) in the case of by-elections for more than one GCs held on the same day. However, to provide a clearer legal basis, we propose to amend section 5 to stipulate that the CEO must designate, by notice published in the Gazette, one or more places as a BPSS or BPSSs for sorting GC ballot papers received from dedicated polling stations in a general election, or where the CEO considers appropriate, a by-election. Relevant amendments are therefore proposed to sections 5, 18 and 25 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, sections 5, 18, 20, 25 and 26 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 and sections 5 and 16 of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009.

### **Section 13 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009**

5. Section 13 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 (“section 13”) proposes to add, inter alia, subsections 45(6)(ga) and (gb) (“the proposed subsections”) to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D). These are to extend the exemption to an officer of the Correctional Services Department or any law enforcement agency on duty at a dedicated polling station from committing an offence by communicating with an elector or authorized representative or using a mobile telephone, paging machine or any other device for electronic communication within a polling station.

6. During the section-by-section examination of the amendment regulations at the meeting, a Member commented that it would be easier to quote the proposed subsections if they are added to the end of subsection 45(6) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and numbered as subsections 45(6)(j) and (k) instead of subsections 45(6)(ga) and (gb).

7. As we have explained at the meeting, we proposed to insert the two subsections after subsection 45(6)(g) instead of after subsection 45(6)(i) in order to avoid consequential amendments to subsections 45(6)(h) and (i). This would help to focus readers' attention on the amendments made. However, having regard to the Member's view, we agree that the proposed subsections could be added to the end of subsection 45(6). Relevant amendments are therefore made to section 13 of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, section 14 of the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009 and section 13 of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009 accordingly.

### **Section 15 of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009**

8. Section 15 of the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 proposes to add, inter alia, a subsection 47(1A)(a)(ii) to the Electoral Procedure (Village Representative Election) Regulation (Cap. 541L). The proposed subsection stipulates that if an elector is an elector in custody and he casts the vote at a dedicated polling station in which the poll for two or more Villages is conducted, he must, if issued with two **or more** ballot papers, put each of them separately into the envelope issued in relation to the relevant Village to him together with the ballot paper, before leaving the compartment. There is a clerical error in the wording of subsection (1A)(a)(ii). As an elector for village representative election could only cast a maximum of two votes, one for the election of Indigenous Inhabitant Representative and one for the election of

Resident Representative, we propose to delete the words “or more” from subsection 47(1A)(a)(ii).

## **WAY FORWARD**

9. Subject to Members’ endorsement of the proposed amendments set out in paragraphs 4, 7 and 8 above, the Administration will move a motion (draft resolution at Annex<sup>1</sup>) at the Legislative Council sitting on 21 October 2009 to amend the specified amendment regulations.

Constitutional and Mainland Affairs Bureau  
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IW039b

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<sup>1</sup> The draft resolution has incorporated technical amendments to the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009, the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009 and the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 and the amendments in the Administration’s reply to the Assistant Legal Adviser’s letter dated 31 August 2009 as endorsed by Members at the meeting. Proposed amendments pursuant to the discussion at the meeting are underlined.

**INTERPRETATION AND GENERAL CLAUSES  
ORDINANCE**

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**RESOLUTION**

(Under section 34(2) of the Interpretation and General Clauses  
Ordinance (Cap. 1))

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**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE) (LEGISLATIVE COUNCIL)  
(AMENDMENT) REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE) (DISTRICT COUNCILS) (AMENDMENT)  
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE) (ELECTION COMMITTEE)  
(AMENDMENT) REGULATION 2009**

**ELECTORAL PROCEDURE (CHIEF EXECUTIVE  
ELECTION) (AMENDMENT) REGULATION 2009**

**ELECTORAL PROCEDURE (VILLAGE  
REPRESENTATIVE ELECTION) (AMENDMENT)  
REGULATION 2009**

RESOLVED that –

- (a) the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 130 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –

- (i) in section 5(2), in the new section 28(1)(c), by repealing “election.” and substituting “election or, where the Chief Electoral Officer considers appropriate, a by-election.”;
- (ii) in section 10(1), in the Chinese text, in the new section 42(8A)(a), by repealing “一個” and substituting “每個”;
- (iii) by repealing section 13 and substituting –

**“13. What constitutes an offence at a polling station**

(1) Section 45(6)(h) is amended by repealing “or”.

(2) Section 45(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 45(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a dedicated polling station;  
or

(k) an officer of any law enforcement agency on duty at a dedicated polling station.”;

- (iv) in section 18(4), in the new section 63A(4), by repealing everything after “prepared by that” and substituting –

“Officer to –

(a) the Presiding Officer of the ballot paper sorting station or the main counting station concerned; or

(b) the Returning Officer of the counting station,

as advised by the Chief Electoral Officer.”;

(v) in section 24, in the Chinese text, in the new section 74AA(h), by repealing “預以” and substituting “予以”;

(vi) in section 25, in the new section 75(4A)(b), by repealing everything after “to the main counting station” and substituting “from one or more ballot paper sorting stations, or one or more dedicated polling stations, as may be appropriate.”;

(b) the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 131 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –

(i) in section 5(2), in the new section 31(1)(c), by repealing “election.” and substituting “election or, where the Chief Electoral Officer considers appropriate, a by-election.”;

(ii) in section 11(1), in the Chinese text, in the new section 45(5A)(a), by repealing “一個” and substituting “每個”;

(iii) by repealing section 14 and substituting –

**“14. What constitutes an offence at a polling station**

(1) Section 48(6)(h) is amended by repealing “or”.

(2) Section 48(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 48(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a dedicated polling station; or

(k) an officer of any law enforcement agency on duty at a dedicated polling station.”;

(iv) in section 18(3), in the new section 57(2A), by adding “or, where the Chief Electoral Officer considers appropriate, a by-election,” after “ordinary election”;

(v) in section 20(4), in the new section 63A(4), by repealing everything after “prepared by that” and substituting “Officer to the Presiding Officer of the ballot paper sorting station or the main counting station concerned, as advised by the Chief Electoral Officer.”;



- (vi) in section 25, in the new section 75A, by repealing “In an ordinary election, the” and substituting “The”;
  - (vii) in section 26, in the new section 76(2)(b), by repealing everything after “to the main counting station” and substituting “from one or more ballot paper sorting stations, or one or more dedicated polling stations, as may be appropriate.”;
- (c) the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 132 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –
- (i) in section 10(1), in the Chinese text, in the new section 42(5A)(a), by repealing “一個” and substituting “每個” ;
  - (ii) by repealing section 13 and substituting –

**“13. What constitutes offence at polling station**

(1) Section 45(6)(h) is amended by repealing “or”.

(2) Section 45(6)(i) is amended by repealing “the polling station.” and substituting “a polling station;”.

(3) Section 45(6) is amended by adding –

“(j) an officer of the Correctional Services Department on duty at a

dedicated polling station;

or

(k) an officer of any law enforcement agency on duty at a dedicated polling station.”.”;

- (d) the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 133 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –
- (i) in section 3(3), in the English text, in the new section 12(3)(i), by repealing “be” and substituting “being”;
  - (ii) in section 7(1), in the Chinese text, in the new section 19(2)(aa)(ii), by repealing the full stop and substituting a semicolon;
- (e) the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009, published in the Gazette as Legal Notice No. 134 of 2009 and laid on the table of the Legislative Council on 24 June 2009, be amended –
- (i) in section 2(4), in the Chinese text, by repealing “或 60A(c)” and substituting “60A(c)”;
  - (ii) in section 5(2), in the new section 28(1)(c), by adding “in a village ordinary election or, where the Director of Home Affairs considers appropriate, a village by-election” after “Village”;
  - (iii) in section 5, by adding –
    - “(3A) Section 28(4) is repealed and the following substituted –

“(4) The Director of Home Affairs shall, in the case of a polling station or a counting station which is not a Government building –

(a) make good any damage caused; and

(b) defray any expenses incurred by any person having control over the structure, place or premises,

due to its having been used as a polling station or a counting station.”.”;

(iv) in section 15(2), in the new section 47(1A)(a)(ii) by repealing “or more”;

(v) in section 15(2), in the Chinese text, in the new section 47(1A)(b), by repealing everything after “是提述” and substituting “載於一個或多於一個封套內的一張或多於一張選票(視屬何情況而定)。”;

- (vi) in section 16(2), in the new section 53(4), by repealing everything after “must be” and substituting “delivered to the Assistant Returning Officer of the ballot paper sorting station or the Returning Officer of the relevant counting station, as advised by the Director of Home Affairs.”;
- (vii) by repealing section 25 and substituting –

**“25. Section 79A added**

The following is added –

**“79A. Certain visitors of electors in custody not to canvass for votes**

- (1) If –
- (a) a person (“visitor”) visits in a certain capacity an elector in custody for a business or official purpose; and
  - (b) another person who is not acting in that capacity is not allowed to visit the elector for that purpose,

the visitor commits an offence if he, during the visit, canvasses for votes for the purpose of an election.

(2) A person who commits an offence under subsection (1) is liable to a fine at level 2 and to imprisonment for 3 months.”.”;

(viii) by repealing section 28.