

L.N. 132 of 2009**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2009****CONTENTS**

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

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

1. Commencement

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

2. Interpretation

(1) Section 1(1) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) is amended, in the definition of “polling station”, by repealing everything after “designated” and substituting “as a polling station under section 28(1) and includes a dedicated polling station;”.

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

““dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 28(1A);

“in custody” (受羈押), in relation to a person, means the person is—

- (a) serving a sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means—

- (a) the Customs and Excise Department;
- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

3. Candidate may appoint election agent

- (1) Section 23(15)(b) is amended by repealing “or”.
- (2) Section 23(15)(c) is amended by repealing the full stop and substituting a semicolon.
- (3) Section 23(15) is amended by adding—
 - “(d) subject to paragraph (e), be present in a dedicated polling station situated in a prison unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to his or her presence; or
 - (e) be present in a dedicated polling station situated in a maximum security prison.”.
- (4) Section 23 is amended by adding—
 - “(16) The Commissioner of Correctional Services must not give consent to an election agent under subsection (15)(d) in respect of a polling station if a polling agent has been appointed under section 42 by the same candidate for that polling station.
 - (17) Despite subsection (15)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that—
 - (a) a voter in custody or an authorized representative in custody who is entitled to vote for the relevant subsector at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
 - (b) the application is lodged without undue delay after the admission or transfer.
 - (18) If the Commissioner of Correctional Services refuses to give consent under subsection (15)(d), the Commissioner must notify the candidate or the election agent as soon as practicable.”.

4. Chief Electoral Officer to appoint polling hours and to give notice in Gazette

- (1) Section 27 is amended by repealing the heading and substituting—
“**Appointment and notification of polling hours**”.
- (2) Section 27(1) is amended by repealing “The” and substituting “Subject to subsections (2A) and (2B), the”.
- (3) Section 27 is amended by adding—

“(2A) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to a voter in custody to whom the polling station is allocated under section 30.

(2B) Subject to section 55, a voter to whom a time slot is assigned under subsection (2A) may only cast his or her vote during the time slot.”.

(4) Section 27 is amended by adding—

“(3A) The Commissioner of Correctional Services must assign the time slot so as to give the voters a reasonable opportunity to vote.”.

(5) Section 27 is amended by adding—

“(4A) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all voters to whom time slots are assigned under subsection (2A) of the time slot assigned to each of them.”.

5. Chief Electoral Officer to designate polling stations and counting stations

(1) Section 28(1) is amended by repealing everything after “published in the” and substituting—

“Gazette—

(a) one or more places as a polling station or polling stations for conducting a poll in respect of the election; and

(b) one or more places as a counting station or counting stations for counting the votes.”.

(2) Section 28 is amended by adding—

“(1A) Without affecting subsection (1), the Chief Electoral Officer must designate one or more places as a dedicated polling station or dedicated polling stations at which voters in custody or authorized representatives in custody are allocated to vote.”.

6. Chief Electoral Officer may arrange for voting for subsectors to take place at polling station and to allocate polling stations to voters and authorized representatives

(1) Section 30 is amended by adding—

“(2A) If a voter or authorized representative will be serving a sentence of imprisonment on the polling day, the Chief Electoral Officer may allocate to the voter or authorized representative a

dedicated polling station to cast the vote or votes he or she is entitled to cast at a subsector election.”.

(2) Section 30 is amended by adding—

“(5) A prescribed public officer must, on a request by the Chief Electoral Officer, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Chief Electoral Officer to perform his or her functions under this section in relation to voters and authorized representatives.

(6) In subsection (5)—

“prescribed information” (訂明資料) means—

- (a) the name of the person;
- (b) the number of the person’s identity document; and
- (c) the name and address of the premises in which the person is detained;

“prescribed public officer” (訂明公職人員) means—

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

7. Chief Electoral Officer to send poll cards to voters and authorized representatives

Section 31 is amended by adding—

“(2A) A poll card sent to a voter or authorized representative who will be serving a sentence of imprisonment in a prison on the polling day must be addressed to the voter or authorized representative and sent, as far as practicable, to the prison.”.

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

Section 39(1) is amended by repealing everything after “Presiding” and substituting—

“Officer of a polling station must ensure that a notice providing information for the guidance of voters and authorized representatives in voting procedure is—

(a) exhibited—

- (i) if the polling station is not a dedicated polling station, outside the polling station; or
- (ii) if the polling station is a dedicated polling station, inside the polling station; and

- (b) exhibited inside every voting compartment of the polling station.”.

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

Section 41(3) is amended by repealing everything after “be removed” and substituting—

“by—

- (a) a police officer;
- (b) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

10. Candidates may appoint polling agents

(1) Section 42 is amended by adding—

“(5A) Despite subsections (1), (3) and (5)—

- (a) subject to paragraphs (b) and (c), only one polling agent may be appointed by a candidate for a dedicated polling station situated in a prison;
- (b) no polling agent may be appointed by a candidate for a dedicated polling station situated in a prison if the Commissioner of Correctional Services has consented under section 23(15)(d) to the presence of the election agent of that candidate in that polling station;
- (c) no polling agent may be appointed for a dedicated polling station situated in a maximum security prison; and
- (d) without affecting subsection (7), the appointment of a polling agent for a dedicated polling station situated in a prison is not effective unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to the appointment.

(5B) Despite subsection (5A)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that—

- (a) a voter in custody or an authorized representative in custody who is entitled to vote for the relevant subsector at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(5C) If the Commissioner of Correctional Services refuses to give consent under subsection (5A)(d), the Commissioner must notify the candidate or the election agent of the candidate as soon as practicable.”.

(2) Section 42(6) is amended by repealing everything before paragraph (a) and substituting—

“(6) A notice appointing a polling agent for a polling station other than a dedicated polling station situated in a prison must, if it is not given under subsection (5), be delivered on the polling day to the Presiding Officer of the polling station—”.

11. Chief Electoral Officer to delineate polling stations on map and display map outside polling station

(1) Section 43 is amended, in the heading, by repealing “**outside polling station**”.

(2) Section 43(1) is amended by repealing everything after “plans.”.

(3) Section 43 is amended by adding—

“(1A) The Chief Electoral Officer must display a map or plan referred to in subsection (1)—

- (a) subject to paragraph (b), outside the polling station concerned; and
- (b) if the map or plan is prepared for a dedicated polling station, inside the polling station.”.

12. Who may enter or be present at polling station

Section 44 is amended by adding—

“(6A) Subsection (6) does not apply to a dedicated polling station situated in a maximum security prison.”.

13. What constitutes offence at polling station

(1) Section 45(6) is amended by adding—

- “(ga) an officer of the Correctional Services Department on duty at a dedicated polling station;
(gb) an officer of any law enforcement agency on duty at a dedicated polling station;”.

(2) Subsection 45(6)(i) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

14. Presiding Officer to keep order at polling station

(1) Section 46 is amended by adding—

“(2A) If a voter or authorized representative who is allocated to vote at a dedicated polling station fails to comply with section 54(1) and (1A), the Returning Officer or the Presiding Officer may order him or her to leave the polling station immediately.”.

(2) Section 46(3) is amended by repealing everything after “do so under” and substituting—

“subsection (2) or (2A), the person may be removed—

(a) if the polling station concerned is not a dedicated polling station, by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or

(b) if the polling station concerned is a dedicated polling station, by—

(i) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;

(ii) an officer of the Correctional Services Department; or

(iii) an officer of any law enforcement agency.”.

(3) Section 46(5) is amended by repealing “this section” and substituting “subsection (2)”.

15. Candidate or election agent may challenge person who has applied for ballot paper or who has voted

(1) Section 52(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(2) Section 52(2) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

- (3) Section 52 is amended by adding—
“(2A) The step specified for the purposes of subsections (1) and (2) is—

- (a) if the polling station is not a dedicated polling station, requesting a police officer to arrest the person concerned; or
- (b) if the polling station is a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

- (4) Section 52(3) is amended by adding “pursuant to a request made” before “under subsection (2)”.

16. Voter or authorized representative having left polling station without casting vote may return to cast vote under certain circumstances

- (1) Section 55 is amended by adding—

“(3A) Despite subsections (1), (2) and (3), a voter or authorized representative to whom a permission is granted under subsection (1) by a Presiding Officer of a dedicated polling station situated in a prison must not cast the vote unless the voter or authorized representative returns to the polling station within the time slot assigned to the voter or authorized representative under subsection (3B) or section 27(2A).

(3B) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to a voter or authorized representative under subsection (1), the Commissioner of Correctional Services must, as far as practicable—

- (a) assign to the voter or authorized representative a new time slot during the polling hours appointed for the polling station; and
- (b) notify the voter or authorized representative of the new time slot.”.

- (2) Section 55(4)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

- (3) Section 55(6) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” after “police officer”.

- (4) Section 55 is amended by adding—

“(6A) If a voter in custody or an authorized representative in custody leaves a dedicated polling station situated in a prison under subsection (6), the Commissioner of Correctional Services must, as far as practicable—

- (a) assign to the voter or authorized representative a new time slot during the polling hours appointed for the polling station; and
- (b) notify the voter or authorized representative of the new time slot.

(6B) The right of a voter in custody or an authorized representative in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (6) is subject to his or her returning to the polling station within the time slot assigned to him or her under subsection (6A) or section 27(2A).”.

17. Section 87A added

The following is added—

“87A. Certain visitors of voters or authorized representatives in custody not to canvass for votes

(1) If—

- (a) a person (“visitor”) visits in a certain capacity a voter in custody or an authorized representative 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 voter or authorized representative for that purpose,

the visitor commits an offence if he or she, 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.”.

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

Section 92(5) is amended by adding “, an officer of the Correctional Services Department, an officer of any law enforcement agency” after “police officer”.

19. Enforcement of provisions as to secrecy

(1) Section 93 is amended by adding—

“(1A) A person who divulges to any other person the identity of a voter in custody commits an offence.”.

(2) Section 93(2) is amended by repealing “Subsection (1) does” and substituting “Subsections (1) and (1A) do”.

Made this 16th day of June 2009.

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

The main object of this Regulation is to amend the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) (“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Election Committee Subsector election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. In this Explanatory Note, a reference to a voter includes an authorized representative.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

Amendments to Part 1 of the principal Regulation

3. Section 2 amends section 1 of the principal Regulation to amend the definition of “polling station” and add several new definitions, including the definition of “dedicated polling station”.

Amendments to Part 2 of the principal Regulation (pre-polling matters)

4. Section 23 of the principal Regulation enables a candidate to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services. Such consent will not be given in respect of a polling station if a polling agent has been appointed by the same candidate for that polling station.

Amendments to Part 3 of the principal Regulation (arrangement for polling)

5. Section 4 amends section 27 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time slots to voters in custody. They may only vote in the time slots assigned to them.

6. Section 5 amends section 28 of the principal Regulation to empower the Chief Electoral Officer to designate dedicated polling stations.

7. Section 6 amends section 30 of the principal Regulation to empower the Chief Electoral Officer to allocate dedicated polling stations to voters who will be serving a sentence of imprisonment on the polling day. To enable the Chief Electoral Officer to perform this function, new provisions (the new section 30(5) and (6) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 31 of the principal Regulation, poll cards containing information on polling are sent to voters before the poll. Section 7 amends that section to provide that poll cards sent to voters who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 39 of the principal Regulation to require the Presiding Officer of a dedicated polling station to exhibit a notice inside the polling station to provide information on voting procedure.

10. Section 41 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 9 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

11. Section 42 of the principal Regulation provides for appointment of polling agents by candidates. Section 10 amends that section to impose, for security reason, restrictions in relation to appointment of polling agents for dedicated polling stations situated in prisons. The consent of the Commissioner of Correctional Services is required.

12. Section 11 amends section 43 of the principal Regulation to require the Chief Electoral Officer to display a map or plan delineating a dedicated polling station inside the polling station.

13. Under section 44 of the principal Regulation, a polling agent may enter or stay in a polling station. Section 12 amends that section to provide, for security reason, that a polling agent may not be present in a dedicated polling station situated in a maximum security prison.

14. Section 45 of the principal Regulation imposes restrictions on communicating with voters or using a telecommunication device in a polling station but provides for an exemption for election officials. Section 13 amends that section to extend that exemption to officers of the Correctional Services Department and other law enforcement agencies on duty at dedicated polling stations.

15. Section 14 amends section 46 of the principal Regulation to provide that a voter who fails to cast his or her vote may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

16. Section 52 of the principal Regulation provides that a person who is suspected to have engaged in corrupt conduct by impersonation may be arrested by police. Section 15 amends that section to provide that in a dedicated polling station, such a person is to be removed by an officer of the Correctional Services Department or any law enforcement agency who is to report the case to the police.

17. Section 55 of the principal Regulation provides that a voter who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 16 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

Amendments to Part 6 of the principal Regulation (miscellaneous matters)

18. Section 17 adds a new section 87A to prohibit a person who visits a voter in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

19. Section 92 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 18 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

20. Section 19 amends section 93 of the principal Regulation to prohibit divulging the identity of a voter in custody.