

**L.N. 134 of 2009****ELECTORAL PROCEDURE (VILLAGE REPRESENTATIVE  
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## ELECTORAL PROCEDURE (VILLAGE REPRESENTATIVE ELECTION) (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 2(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) is amended, in the definition of “counting station”, by adding “and includes a ballot paper sorting station” after “28”.

(2) Section 2(1) is amended, in the definition of “polling station”, by adding “and includes a dedicated polling station” after “28”.

(3) Section 2(1) is amended, in the English text, in the definition of “Presiding Officer”, by repealing “the Presiding” and substituting “a Presiding”.

(4) Section 2(1) is amended, in the definition of “verification statement”, by adding “60A(c), 61(1A)(d) or” before “64(1)(d)”.

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

““ballot paper sorting station” (選票分流站) means a place designated as a ballot paper sorting station under section 28;

“counting of the votes” (點票) includes separation, sorting and counting of ballot papers;

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

“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);”.

(6) Section 2(3)(b) is amended by repealing “; and” and substituting a semicolon.

(7) Section 2(3)(c) is amended by repealing the full stop and substituting “; and”.

(8) Section 2(3) is amended by adding—

“(d) a reference to the Returning Officer shall be construed, in relation to the application of the relevant provision to a ballot paper sorting station, as a reference to the Assistant Returning Officer appointed under section 57(1A) for that ballot paper sorting station.”.

### 3. Appointment of election agent

(1) Section 22(3)(f) is amended by repealing “and”.

(2) Section 22(3)(g) is amended by repealing the full stop and substituting a semicolon.

(3) Section 22(3) is amended by adding—

“(h) subject to paragraph (i), being present in a dedicated polling station situated in a prison unless, upon an application in the specified form lodged with the Director of Home Affairs at least one week before polling day, the Commissioner of Correctional Services consents to his presence; and

(i) being present in a dedicated polling station situated in a maximum security prison.”.

(4) Section 22 is amended by adding—

“(3A) The Commissioner of Correctional Services must not give consent under subsection (3)(h) if he has given consent under section 37(1A) to a polling agent of the same candidate.

(3B) Despite subsection (3)(h), the Commissioner of Correctional Services may, upon an application lodged under that subsection during the week before polling day, give consent under that subsection if he is satisfied that—

- (a) an elector in custody who is entitled to vote 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.

(3C) If the Commissioner of Correctional Services refuses to give consent under subsection (3)(h), he must notify the candidate or the election agent as soon as practicable.”.

#### 4. Appointment of polling hours

- (1) Section 27 is amended by adding—

“(1A) The Director of Home Affairs may appoint different polling hours for different Villages and for different polling stations.

(1B) 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 an elector in custody to whom the polling station is allocated under section 28A.

(1C) Subject to section 46, an elector to whom a time slot is assigned under subsection (1B) may only cast his vote during the time slot.

(1D) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all electors to whom time slots are assigned under subsection (1B) of the time slot assigned to each of them.”.

- (2) Section 27 is amended by adding—

“(2A) The Commissioner of Correctional Services must assign the time slot so as to give the electors a reasonable opportunity to vote.”.

#### 5. Designation of polling stations and counting stations

(1) Section 28 is amended, in the heading, by repealing “**and counting**” and substituting “**, ballot paper sorting stations and counting**”.

(2) 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 the poll for a Village;

- (b) one or more places as a dedicated polling station or dedicated polling stations at which electors in custody are allocated to vote in the poll for a Village;
- (c) one or more places as a ballot paper sorting station or ballot paper sorting stations for sorting ballot papers received from dedicated polling stations in the poll for a Village; and
- (d) one or more places as a counting station or counting stations for counting the votes cast at the polling station or polling stations used in the poll for a Village.”.

(3) Section 28(2)(b) is amended by adding “, whether or not” after “premises”.

(4) Section 28(7) is amended by repealing everything after “Affairs shall” and substituting—

“display the relevant map or plan referred to in subsection (6)—

- (a) if the relevant polling station is not a dedicated polling station, in a prominent place immediately outside the polling station;
- (b) if the relevant polling station is a dedicated polling station, in a prominent place inside the polling station; and
- (c) in a prominent place immediately outside the relevant counting station.”.

## 6. Section 28A added

The following is added—

### “28A. Allocation of polling stations to electors in custody

(1) The Director of Home Affairs may allocate to each elector in custody a dedicated polling station to cast the vote he is entitled to cast at an election.

(2) A prescribed public officer must, upon a request by the Director of Home Affairs, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Director of Home Affairs to perform his functions under this section in relation to electors.

(3) In subsection (2)—

“prescribed information” (訂明資料) means—

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

“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. Director of Home Affairs to send polling notices to electors**

Section 29 is amended by adding—

“(2A) A polling notice sent to an elector who will be serving a sentence of imprisonment in a prison on the polling day must be addressed to the elector and sent, as far as practicable, to the prison.”.

## **8. Miscellaneous arrangements relating to voting**

(1) Section 33(5)(a) is amended by repealing “the polling station; and” and substituting “a polling station which is not a dedicated polling station;”.

(2) Section 33(5) is amended by adding—

“(aa) in a prominent place inside a dedicated polling station; and”.

## **9. Determination of no canvassing zone and no staying zone**

Section 34(6) is amended by repealing “near the” and substituting “near each”.

## **10. Order at no canvassing zone and no staying zone**

Section 35(8) 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 who ordered him to leave 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.”.

## 11. Admission to polling station

(1) Section 37(1)(j) is amended by repealing “(3), (4), (5)” and substituting “(1A), (3), (4), (5), (6A), (6B)”.

(2) Section 37(1)(k) is amended by repealing “(3), (4), (6)” and substituting “(1A), (3), (4), (6), (6A), (6B)”.

(3) Section 37 is amended by adding—

“(1A) A polling agent may not be present in a dedicated polling station situated in a prison unless, upon an application in the specified form lodged with the Director of Home Affairs at least one week before polling day, the Commissioner of Correctional Services consents to his presence.

(1B) The Commissioner of Correctional Services must not give consent under subsection (1A) if he has given consent under section 22(3)(h) to the election agent of the same candidate.

(1C) Despite subsection (1A), the Commissioner of Correctional Services may, upon an application lodged under that subsection during the week before polling day, give consent under that subsection if he is satisfied that—

- (a) an elector in custody who is entitled to vote 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.

(1D) If the Commissioner of Correctional Services refuses to give consent under subsection (1A), the Commissioner must notify the candidate or the election agent of the candidate as soon as practicable.”.

(4) Section 37 is amended by adding—

“(6A) If a candidate is present in a dedicated polling station, the election agent or the polling agent of that candidate may not be present in the polling station at the same time.

(6B) No election agent or polling agent may be present in a dedicated polling station situated in a maximum security prison.”.



## 12. Order at polling station

(1) Section 38(2) is amended by adding “appointed for it” before “contrary”.

(2) Section 38(3)(f) is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

(3) Section 38 is amended by adding—

“(9A) If an elector who is allocated to vote at a dedicated polling station fails to cast his vote without undue delay in accordance with section 47(1), the Returning Officer or the Presiding Officer may order him to leave the polling station immediately.”.

(4) Section 38(10) is amended by repealing everything after “subsection” and substituting—

“(8) or (9A), the person may be removed—

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

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

(i) a person authorized in writing by the Returning Officer who ordered the person to leave 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.”.

## 13. Challenging a person who has applied for a ballot paper or who has voted

(1) Section 44(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(2) Section 44(3) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(3) Section 44 is amended by adding—

“(3A) The step specified for the purposes of subsections (1) and (3) 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 44(4)(b) is amended by adding “pursuant to a request made” before “under subsection (3)”.

#### **14. Elector who has not cast vote may return to cast vote with permission**

(1) Section 46 is amended by adding—

“(2A) Despite subsections (1) and (2), an elector 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 elector returns to the polling station within the time slot assigned to him under subsection (2B) or section 27(1B).

(2B) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to an elector under subsection (1), the Commissioner of Correctional Services must, as far as practicable—

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

(2) Section 46(3)(b) is amended by repealing everything after “presence” and substituting—

“of—

- (i) if the polling station is not a dedicated polling station, a police officer; or
- (ii) if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

(3) Section 46 is amended by adding—

“(5A) If an elector in custody leaves a dedicated polling station situated in a prison under subsection (5), the Commissioner of Correctional Services must, as far as practicable—

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

(5B) The right of an elector in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (5) is subject to his returning to the dedicated polling station within the time slot assigned to him under subsection (5A) or section 27(1B).”.

(4) Section 46(6)(b) is amended by repealing everything after “presence” and substituting—

“of—

- (i) if the polling station is not a dedicated polling station, a police officer; or
- (ii) if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

## 15. Voting procedure

(1) Section 47(1) is amended by adding “subsection (1A) and” after “Subject to”.

(2) Section 47 is amended by adding—

“(1A) 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—

(a) he must—

(i) if issued with a ballot paper, put it into the envelope issued to him together with the ballot paper;

(ii) 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; and

(b) the references to ballot paper or ballot papers in subsection (1)(d) and (f) have effect in relation to him as if they are references to ballot paper or ballot papers contained in the envelope or envelopes, as the case may be.”.

## **16. Steps to be taken at a polling station after the close of the poll**

(1) Section 53(2) is amended by adding “of a polling station which is not a dedicated polling station” after “Presiding Officer”.

(2) Section 53 is amended by adding—

“(3) As soon as practicable after complying with subsection (1), the Presiding Officer of a dedicated polling station shall deliver—

- (a) the sealed ballot box or boxes;
- (b) the sealed packets referred to in subsection (1)(b); and
- (c) the ballot paper account or accounts,

in accordance with subsection (4).

(4) The items specified in subsection (3) must be delivered—

- (a) if the poll is conducted for two or more Villages, to the Assistant Returning Officer of the ballot paper sorting station; or
- (b) if the poll is conducted for one Village, to the Returning Officer of the relevant counting station.”.

## **17. Determination and notice of time of counting of votes**

(1) Section 55(1) is amended by adding “or, in the case of a ballot paper sorting station, the Assistant Returning Officer” after “Officer”.

(2) Section 55(2) is amended by repealing everything after “subsection” and substituting—

“(1)—

- (a) by the Returning Officer shall be a time after the close of the poll for the Village concerned;
- (b) by the Assistant Returning Officer shall be a time after the close of the poll for the Village concerned at all dedicated polling stations situated in prisons at which polling for the Village concerned was conducted; and
- (c) may be a time before the poll has closed at all the other polling stations at which polling for the Village concerned is conducted.”.

## **18. Appointment of counting officers**

Section 57 is amended by adding before subsection (1)—

“(1A) The Electoral Affairs Commission may appoint an Assistant Returning Officer to preside at a ballot paper sorting station.”.

**19. Opening a ballot box**

Section 60(1) is amended by repealing “53(2)” and substituting “53”.

**20. Section 60A added**

The following is added—

**“60A. Arrangements for sorting in ballot paper sorting stations**

After opening the ballot boxes under section 60, the Assistant Returning Officer presiding at the ballot paper sorting station must—

- (a) count and record the number of envelopes in each ballot box;
- (b) verify the ballot paper account by comparing it with the number of envelopes recorded under paragraph (a);
- (c) prepare a statement in writing as to the result of the verification;
- (d) sort the envelopes according to each Village;
- (e) prepare a statement in writing as to the number of envelopes containing ballot papers recorded for each Village under paragraph (d);
- (f) make into separate bundles the sorted envelopes together with the relevant statement prepared under paragraph (e);
- (g) place each bundle into a separate receptacle and seal it in the presence of those present in the counting zone; and
- (h) arrange the receptacles to be delivered to the Returning Officers of the respective counting stations.”.

**21. Counting of votes**

(1) Section 61 is amended by adding before subsection (1)—

“(1A) After opening all ballot boxes in accordance with section 60, the Returning Officer must—

- (a) open the envelopes containing ballot papers received from the ballot paper sorting station;
- (b) count and record the number of ballot papers in each ballot box under his charge;
- (c) verify the ballot paper accounts received from all the polling stations by comparing them with the number of ballot papers recorded under paragraph (b);

- (d) prepare a statement in writing as to the result of the verification; and
- (e) arrange to mix the ballot papers cast at all polling stations.”.

(2) Section 61(1) is amended by repealing “in a ballot box opened in accordance with section 60 shall” and substituting “shall then”.

## **22. Verification of ballot paper account**

(1) Section 64(2) is amended, in the English text, by repealing “account” and substituting “accounts”.

(2) Section 64(3)(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

## **23. Result of counting and re-count**

Section 65(1) is amended, in the English text, by repealing “account is” and substituting “accounts are”.

## **24. Ballot papers, accounts, packets, etc. to be sent to Director of Home Affairs**

Section 69(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

## **25. Section 79A added**

The following is added—

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

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.”.

**26. Declaration of secrecy**

Section 81(2)(c) is amended by adding “, an officer of the Correctional Services Department or an officer of any law enforcement agency” after “officer”.

**27. Secrecy**

- (1) Section 82(1) is amended by adding—  
“(aa) subject to subsection (2), divulge to any other person the identity of an elector in custody;”.
- (2) Section 82(2) is amended by adding “or (aa)” before “does”.

**28. Offence**

Section 89(1) is amended by adding “, 79A” after “79”.

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 Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) (“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Village Representative election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. Ballot papers cast at dedicated polling stations in an election conducted for two or more Villages will be sorted at ballot paper sorting stations before they are sent to counting stations for counting.

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 2 of the principal Regulation to amend several definitions and add several new definitions, including the definitions of “ballot paper sorting station” and “dedicated polling station”.

### Amendments to Part 3 of the principal Regulation (election agent)

4. Section 22 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.

### Amendments to Part 4 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 electors in custody. They may only vote during the time slots assigned to them.

6. Section 5 amends section 28 of the principal Regulation to empower the Director of Home Affairs to designate dedicated polling stations and ballot paper sorting stations.

7. Section 6 adds a new section 28A to empower the Director of Home Affairs to allocate dedicated polling stations to electors who will be serving a sentence of imprisonment on the polling day. To enable the Director of Home Affairs to perform this function, new provisions (the new section 28A(2) and (3) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 29 of the principal Regulation, polling notices containing information on polling are sent to electors before the poll. Section 7 amends that section to provide that polling notices sent to electors who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 33 of the principal Regulation to require the Presiding Officer of a dedicated polling station to display a notice inside the polling station to provide information on voting procedure.

10. Section 9 amends section 34 of the principal Regulation to reflect the fact that there may be more than one polling station.

11. Section 35 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 10 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

12. Section 37 of the principal Regulation provides for admission to polling stations. Section 11 amends that section to impose, for security reason, restrictions in relation to the presence of polling agents and election agents in dedicated polling stations situated in prisons. For a polling agent, the consent of the Commissioner of Correctional Services is required.

13. Section 12 amends section 38 of the principal Regulation to provide that an elector who fails to cast his vote without undue delay 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.

#### Amendments to Part 5 of the principal Regulation (voting)

14. Section 44 of the principal Regulation provides that a person who is suspected to have engaged in corrupt conduct of impersonation may be arrested by the police. Section 13 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.

15. Section 46 of the principal Regulation provides that an elector 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 14 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

16. Section 15 amends section 47 of the principal Regulation to provide for the voting procedure as regards dedicated polling stations.

17. Section 16 amends section 53 of the principal Regulation to provide for the steps to be taken by the Presiding Officer at the close of the poll at a dedicated polling station.

#### Amendments to Part 6 of the principal Regulation (counting stage)

18. The polling hours appointed for dedicated polling stations may be shorter than those appointed for other polling stations. Section 17 amends section 55 of the principal Regulation to provide that the sorting of ballot papers received from dedicated polling stations situated in prisons at ballot paper sorting stations may commence before the poll has closed at all the other polling stations.

19. Section 18 amends section 57 of the principal Regulation to confer on the Electoral Affairs Commission a power to appoint Assistant Returning Officers to preside at ballot paper sorting stations.

20. Section 19 makes a minor amendment to section 60 of the principal Regulation.

21. Section 20 adds a new section 60A to provide for the arrangements for ballot paper sorting in ballot paper sorting stations.

22. Section 21 amends section 61 of the principal Regulation to provide that before the counting of votes begins, the ballot papers received from dedicated polling stations and other polling stations must be mixed with those at the counting stations.

23. Sections 22 and 23 make minor consequential amendments to sections 64 and 65 of the principal Regulation respectively.

#### Amendment to Part 7 of the principal Regulation (disposal of document)

24. Section 24 makes a minor consequential amendment to section 69 of the principal Regulation.

Amendments to Part 9 of the principal Regulation (miscellaneous matters)

25. Section 25 adds a new section 79A to prohibit a person who visits an elector 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.
26. Section 81 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 26 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.
27. Section 27 amends section 82 of the principal Regulation to prohibit divulging the identity of an elector in custody.
28. Section 28 amends section 89 of the principal Regulation to make contravention of the new section 79A an offence.