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Legislative Council

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 21 October 2009

**Proposed resolution under
the Interpretation and General Clauses Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Constitutional and Mainland Affairs will move at the Council meeting of 21 October 2009 under the Interpretation and General Clauses Ordinance relating to:

- (a) the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009;
- (b) the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009;
- (c) the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009;
- (d) the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009; and
- (e) the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009.

The President has directed that 'it be printed in the terms in which it was handed in' on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

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

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) by repealing section 11(1) and substituting –

“(1) Section 37(1)(j) is amended by repealing “and (8)” and substituting “, (6A), (6B) and (8) and section 22(3)”.”;

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

(vi) 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)。”;

- (vii) 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.”;
- (viii) 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.”.”;

(ix) by repealing section 28.

Legislative Council sitting on 21 October 2009
Proposed Amendments to
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
Speech for the Secretary for Constitutional and Mainland Affairs

President,

I move that the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2009, the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2009, the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2009, the Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2009 and the Electoral Procedure (Village Representative Election) (Amendment) Regulation 2009 (“the amendment regulations”) to be amended as set out on the Agenda.

The amendment regulations were tabled at the Legislative Council on 24 June 2009, and were later scrutinized by the Subcommittee on Subsidiary Legislation. The Subcommittee has finished the related scrutinizing work. I hereby express my wholehearted gratitude to the Honourable IP Kwok-him, the Chairman of the Subcommittee, and the other Honourable members for their invaluable opinions during the course of the scrutiny.

The amendment regulations were made by the Electoral Affairs Commission (“EAC”) to facilitate prisoners and persons remanded, detained or arrested who are registered electors (“electors in custody”) to cast their votes in public elections.

The Chief Electoral Officer or the Director of Home Affairs Must Designate Ballot Paper Sorting Station

During the section-by-section examination of the amendment regulations at the Subcommittee meeting, a Member noticed that the amendment regulations propose to stipulate that the Chief Electoral Officer (“CEO”) or the Director of Home Affairs (“DHA”) must designate, by notice published in the Gazette, one or more places as a ballot paper sorting station (“BPSS”) or BPSSs for sorting ballot papers received from dedicated polling stations in a general election or an ordinary election. The Member pointed out that a BPSS might also be required in certain scenarios other than a general election or an ordinary election, for example, when by-elections for more than one constituency are held on the same day.

In a general election or an ordinary election, as ballot papers are cast in respect of all the constituencies, it is necessary to set up BPSSs to sort the ballot papers received from the dedicated polling stations before they 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 that the 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 case by-elections for more than one constituency are held on the same day. However, to provide a clearer legal basis, we propose to amend the amendment regulations to stipulate that the CEO or the DHA must designate, by notice published in the Gazette, one or more places as a BPSS or BPSSs for sorting ballot papers received from dedicated polling stations in a general election or an ordinary election, or where the CEO or the DHA considers appropriate, a by-election.

Other Amendments

The motion proposed by the Government also includes some technical amendments.

The proposed amendments that I move are supported by the Subcommittee. I wish to express my gratitude to the Subcommittee again for the invaluable opinions.

I would like to appeal to Honourable Members to vote in favour of my proposed amendments. Thank you, President.

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