

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (DISTRICT COUNCILS) REGULATION

INTRODUCTION

On 2 June 1999, the Electoral Affairs Commission (EAC) made the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (the Regulation) at the Annex under section 7 of the EAC Ordinance.

BACKGROUND

2. Pursuant to the District Councils Ordinance (No.8 of 1999) (DCO), the first District Councils ordinary election must be held in 1999 and an ordinary election must be held in each subsequent fourth year after the first ordinary election. For the first District Councils ordinary election, 390 elected members will be returned from 390 constituencies by means of the first past the post voting system.

3. The EAC needs to make regulation for the conduct and supervision of, and procedure for, the elections mentioned in paragraph 2 above.

THE REGULATION

Structure of the Regulation

4. The Regulation consists of six parts and three schedules. It applies to an ordinary election and a by-election.

Before the Poll (Part II)

5. Part II prescribes the procedures to be adopted during the various stages of an election before the holding of the poll.

Register for the first ordinary election (Division 1)

6. The Electoral Registration Officer (ERO) must compile and publish, not later than two months before the first ordinary election, a register showing the elector's name, address and constituency allocated. To safeguard the privacy of the elector, an elector's identity card number or identification document number and sex will not be shown. The register so published would be made available for public inspection.
(sections 4 and 5)

7. The Electoral Registration Officer (ERO) must allocate to an elector a constituency in which he or she is entitled to vote at the first ordinary election according to the elector's residential address as recorded in the existing final register published in March 1999.
(section 6)

Nominations (Division 2)

8. This Division sets out how a person is to be nominated as a candidate for an election. The main provisions are as follows:

- (a) As soon as practicable after the Chief Executive has specified a date for holding an election under the DCO, the Chief Electoral Officer (CEO) must publish a notice calling for nominations for the election. The notice is to state where and when nomination forms are to be submitted. *(section 8)*
- (b) A person who intends to stand for election has to submit his nomination form, together with the required deposit, to the respective Returning Officer (RO) within the nomination period and at the address specified in the notice. *(section 12)*

- (c) On receipt of a nomination form, the RO is to decide as soon as practicable whether the candidate is validly nominated. The RO must, within 14 days of the expiry of the nomination period, publish a notice of particulars of all the validly nominated candidates. In deciding whether a candidate is validly nominated or not, the RO is required to have regard to any advice on that candidate's eligibility given, if any, by a Nominations Advisory Committee (District Councils) set up under the Electoral Affairs Commission (Nominations Advisory Committees (District Councils)) Regulation. (*sections 16 and 17*)
- (d) If there is only one validly nominated candidate for a constituency, the RO has to publish a notice to publicly declare that the candidate is elected. (*section 23*)
- (e) If it comes to the knowledge of the RO before the election day that a validly nominated candidate has died or is disqualified from being nominated, the RO has to declare by a public notice or public announcement to that effect and to further declare which candidate or candidates remain validly nominated. If only one validly nominated candidate remains for the constituency, the RO must publish a notice to publicly declare that the candidate is duly elected. (*sections 24 and 25*)

Election agents and election expenses agents (Division 3)

9. Each candidate may appoint one election agent and any number of election expenses agents. The candidate must give a notice of appointment of his election agent and a copy of authorisation for each election expenses agent to the RO for public inspection. A candidate may revoke the appointment or authorisation of his agents, but he must give a notice of the revocation to the RO. The revocation will not be effective until the notice of the revocation is received by the RO. (*sections 26-29*)

The Poll (Part III)

10. Part III sets out the functions to be performed by various electoral officers, what the candidates may do and what a person is prohibited from doing at or near a polling station. The main provisions are as follows :

Preparation for polling

- (a) At least 10 days before the polling day, the CEO must by notice published in the Gazette, specify the polling hours, designate polling stations and counting stations for the election. The CEO must also assign polling stations and send poll cards to electors. In order to make allowance for emergency situations, e.g., polling stations being flooded, the CEO is empowered to designate one or more polling stations in addition to or in lieu of the assigned polling station where circumstances require. (*sections 30-34*)
- (b) The CEO must appoint a Presiding Officer (PRO) for each polling station and polling officers to assist the PRO. (*section 37*)
- (c) The CEO must supply a copy of the relevant part of the final register to each candidate, the RO and the PRO. (*sections 38-40*)
- (d) At each polling station, the CEO must provide voting compartments, chops and other materials that are necessary to enable electors to mark ballot papers. Also, the CEO must ensure that the name of any deceased or disqualified candidate is crossed out if it has been printed on the ballot papers. (*section 40*)

Polling arrangements

- (e) Before the poll commences, the PRO appointed for the polling station must show the empty ballot boxes to those who

are present at the polling station, lock and seal the ballot boxes so that they cannot be opened without breaking the seals. (*section 51*)

- (f) During the poll, a ballot paper will be given to a person only if the PRO is satisfied of his identity. A person may be issued with only one ballot paper. In case of doubt, the PRO may ask the persons the questions before issuing a ballot paper to that person. After a ballot paper is issued, a line will be placed across that person's name and identity document number in the copy of the final register. (*sections 53 and 54*)
- (g) An elector should go into one of the voting compartments and use a chop with a tick "✓" provided at the polling station to mark against the name of the candidate of his or her choice. Any ballot paper not marked by using the chop provided will not be counted. Before leaving the voting compartment, the elector should fold the ballot paper so that the marked side is inside and put the folded ballot paper into the ballot box. (*sections 57 and 58*)

After the poll

- (h) At the close of the poll, the PRO must seal each ballot box and make up into separate sealed packets :-
 - (i) ballot papers which have not been issued;
 - (ii) the unused ballot papers;
 - (iii) the spoilt ballot papers; and
 - (iv) the marked copies of the final register.
- (i) The PRO should also prepare a ballot paper account for each packet of sealed ballot paper and deliver the above items to

the RO at the counting station. (*sections 63 and 64*)

No Canvassing Zones and No Staying Zones

- (j) To ensure smooth and safe passage of electors into and out of polling stations, the ROs concerned are required to determine an area outside each polling station as a “no canvassing zone” and an area within that zone as a “no staying zone”. The candidates concerned must be notified at least seven days before polling day. On polling day, the RO must display a notice showing the areas of the no canvassing zone and no staying zone at or near the polling station.
- (k) Within a no canvassing zone, no canvassing of vote is allowed except canvassing from door to door without obstructing any persons on the storeys above or below street level in a building within the zone, other than in a building where a polling station is situated.
- (l) The PRO must keep order in the no canvassing zone and the no staying zone. If a person misbehaves himself or herself in these zones, that person can be ordered by the PRO to leave these zones. If that person fails to leave when ordered to do so, he or she may be removed on the order of the RO or PRO and cannot return to these zones on the same day without the permission of the RO or PRO. (*sections 43 and 44*)

Orders at a polling station

- (m) The PRO has the power to regulate the number of persons who can enter a polling station and exclude persons from the polling station. A candidate, his election agent or one of his polling agents may be present at a polling station subject to the availability of seats in the area designated to accommodate them. (*section 47*)

- (n) A candidate may appoint 2 polling agents for each polling station. He must give a notice of such an appointment to the RO at least three working days before the polling day or deliver the notice to the PRO in person on the polling day. (*section 45*)

- (o) A person commits an offence if he does any of the following acts within a polling station : communicates with an elector or uses a mobile phone, paging machine or any other device for electronic communication contrary to a direction of the PRO not to do so, films or takes photographs or makes any audio or video recording without permission, fails to obey a lawful order of the PRO or RO, canvasses votes, wears clothing or accessories to promote a candidate or behaves in a disorderly manner. (*section 48*)

The Count (Part IV)

11. Part IV provides for matters relating to the counting of the votes. The main provisions are as follows:

Procedures for counting

- (a) The RO must determine the time for the counting of votes to begin and must give notice of the time and place for the counting of the votes to the candidates or the election agents or the counting agents of the candidates. (*section 65*)

- (b) There will be a district counting station for each District with a number of counting zones. The entire counting process for each constituency in the District will be conducted in one counting zone.

- (c) The PRO must arrange for the ballot boxes to be delivered to the district counting stations and handed over to the relevant RO. Each RO to whom a ballot box is handed must prepare a verification of a ballot paper account.

(sections 71, 73 and 75)

- (d) The RO or the Assistant Returning Officer must break the seal of the ballot boxes in the presence of the candidates and their election agents or counting agents. *(sections 74 and 90)*
- (e) If more than one polling station is used for polling for a constituency, ballot papers from two or more polling stations must be mixed before counting. *(section 76)*
- (f) When the counting of the votes and re-counts, if any, are completed and the result of the election is determined, the RO must declare the candidate who is successful at the election to be elected and publish a notice of the result of the election. *(section 77)*
- (g) The decision of the RO on whether a ballot paper should be counted is final and may be questioned only by an election petition. *(sections 79 and 80)*

Orders at a counting station

- (h) Other than the Chief Returning Officer (CRO), RO, ARO and authorized persons, only candidates, election agents and counting agents may be present at the counting station. The CRO may make arrangements for members of the public to watch the count if it will not prejudice the secrecy of the ballot and is practicable. *(section 68)*
- (i) A candidate may appoint counting agents to observe the counting of votes for the constituency contested by the candidate. He must give a notice of such an appointment to the RO at least three working days before the polling day or deliver to the RO in person or by the election agent on polling day. The maximum number of counting agents for each candidate will be determined by the EAC in due course. *(section 66)*

- (j) A person commits an offence if he does any of the following acts : films or takes photographs or makes any audio or video recording within a counting zone of a counting station without permission, fails to comply with a lawful order given by the CRO or RO or behaves in a disorderly manner.
(*section 69*)

- (k) The CRO or RO may order a person who behaves in a disorderly manner or fails to comply with a lawful order to leave the counting station. If that person fails to leave, he may be removed and may not enter the counting station again on the same day without permission of the CRO or RO.
(*section 70*)

Disposal of documents (Part V)

12. Part V provides that after counting, documents relating to an election will be made up into separate sealed packets and delivered to the CEO for custody. The CEO will retain custody of the documents for six months. No person will be allowed to inspect the documents unless on a court order in relation to an election petition or criminal proceedings.

Miscellaneous and Supplementary Provisions (Part VI)

Free postage services

13. A validly nominated candidate is entitled to send one letter free of postage to each elector in the constituency for which he or she is validly nominated. The minimum and maximum sizes of a free postage item are 90 mm x 140 mm and 175 mm x 245 mm respectively and each item should not exceed 50 grams in weight. The candidate or the candidate's representative must declare that each letter contains materials which was identical to the specimen submitted to the Postmaster General. If any letter sent under such declaration is found to be different from the specimen submitted, the candidate is liable for payment of postage for all his letters sent under the free postage arrangements. (*section 102*)

Election advertisements

14. A candidate must consecutively number election advertisement to be displayed, distributed or used. Each type of election advertisement must be numbered as a separate series. This requirement does not, however, apply to election advertisements to be distributed by facsimile or covered by other electronic transmission, or the exemptions specified in this section including material of or smaller than A4 size, balloons, T-shirts, caps, badges and carrying bags.

15. The Regulation further requires each candidate to make a declaration in a specified form, stating the quantity of each type of election advertisements (including audio or video tapes or discs) he intends to display, distribute or use and other information (serial number and locations of display etc.). Within seven days after a candidate has displayed, distributed or used such advertisements, he must submit the relevant declaration and furnish two copies of the advertisement to the RO. Where it is not practicable to make a copy of an election advertisement, two postcard size colour photographs of the advertisement should be furnished instead. These documents will be made available for public inspection. The RO may seize and dispose of any election advertisement on display, which has not complied with these provisions. (*section 103*)

Offence of false declaration

16. Section 104 makes it an offence if a person knowingly makes a statement which is false or recklessly makes a statement which is incorrect in a material particular or knowingly omits a material particular from an election related document. An offence under this section is an offence prescribed for the purpose of section 21 of the DCO, i.e., a person convicted of the offence is disqualified from being nominated as a candidate and from being elected as an elected member, and section 24 of the DCO, i.e., an elected member convicted of the offence is disqualified from holding office. (*section 104*)

Schedules

17. There are three schedules to the Regulation. Schedule 1 sets out the procedures for postponement or adjournment of an election due to inclement weather or material irregularity. Schedule 2 prescribes the form of the ballot paper for the election. Schedule 3 prescribes the form for the notice of election results to be published in the Gazette.

Penalty

18. A person who commits an offence under this Regulation is liable to a fine at level 2 (\$2,001 - \$5,000) and to imprisonment for 6 months. (*sections 48, 88, 94, 103 and 104*)

PUBLIC CONSULTATION

19. The public has been consulted on the EAC's "Proposed Guidelines on Election-related Activities in respect of the 1999 District Councils Elections" from 12 April to 11 May 1999. The EAC has considered the public views before making the Regulation.

BASIC LAW IMPLICATIONS

20. The Department of Justice advises that the Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

21. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

22. The expenses in connection with the electoral arrangements are to be absorbed within the total cost for the 1999 District Councils elections.

LEGISLATIVE TIMETABLE

23. The Regulation will be published in the Gazette on 4 June 1999. It will be tabled in the Legislative Council on 9 June 1999 and will come into operation on 1 August 1999.

PUBLICITY

24. A press conference will be held on 2 June 1999 and a press release will be issued to announce the publication of the Regulation in the Gazette. A spokesman will be available for answering media enquiries.