

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL)(AMENDMENT) REGULATION 2000

INTRODUCTION

On 13 March 2000, the Electoral Affairs Commission (EAC) made the Electoral Affairs Commission (Electoral Procedure)(Legislative Council)(Amendment) Regulation 2000 (the Regulation) at Annex under section 7 of EAC Ordinance.

BACKGROUND

2. At present, arrangements for elections to the Legislative Council (LegCo) are set out in the Legislative Council Ordinance (LegCo Ordinance)(Cap.542) and the Electoral Affairs Commission (Electoral Procedure) (LegCo) Regulation (EAC(EP)(LC)R). Having regard to the enactment of the LegCo (Amendment) Ordinance and the Elections (Corrupt and Illegal Conduct) Ordinance (ECIC Ordinance) as well as EAC's recommendations on measures for improvement of electoral arrangements in light of the experience from 1998 LegCo elections and 1999 District Councils (DC) election, amendments to the existing EAC(EP)(LC)R are necessary. The new arrangements for counting geographical constituency (GC) ballot papers at 5 separate counting stations also entails amendments to the EAC(EP)(LC)R.

THE AMENDMENT REGULATION

3. Details of the major amendments are set out in the following paragraphs. Section numbers in those paragraphs, unless otherwise stated, are those of the EAC(EP)(LC)R.

(A) Amendments consequent upon the changes introduced in the LegCo (Amendment) Ordinance 1999

Termination of election proceedings

4. In the past, if a validly nominated candidate for a constituency or the Election Committee (EC) election was dead or became disqualified after the close of nomination, the relevant election proceedings had to be terminated. The Returning Officer (RO) had no statutory power to overturn his or her earlier decision of validating the candidate's nominations. In order to minimize the risk of disruption to the electoral process, the LegCo (Amendment) Ordinance enacted in 1999 empowers the RO to revise the list of validly nominated candidates of geographical constituency (GC) or EC and allow the relevant election proceedings to continue.

Death or disqualification of a validly nominated candidate for election for GC or by EC before date of election (Sections 22A-C)

5. If the RO comes to know that the candidate has died or is disqualified before the election day, the newly added sections 22A and 22B set out how the notice and declarations required by the LegCo Ordinance are to be made.

6. The newly added section 22C requires the RO to declare, under certain circumstances after the death or disqualification of a candidate, that no poll is to be held. In some cases, he or she has to declare that the remaining candidate or candidates are duly elected as Member or Members or that the election has failed.

Procedure in case of death or disqualification of candidate before or after close of poll (Sections 97 and 97A)

7. Section 97(2) is amended so that if the RO knows about the death or disqualification of a candidate on the election day but before the close of poll, the RO must direct that the poll be abandoned.

8. The newly added section 97A provides that if the RO knows about the death or disqualification of a candidate after the close of polling but before the declaration of the election results, the RO must direct that

the counting of the votes is to begin or continue, as if the death or disqualification had not occurred. If, after the votes are counted, the candidate who has died or is disqualified loses the election, the RO must declare the successful candidate to be elected. The section also regulates the procedure to be followed by the RO if the deceased or disqualified candidate is found to be successful at the election.

(B) Amendments for general improvements and streamlining procedures

Appointment of Election Expense Agents (Section 25)

9. In light of section 23 of the ECIC Ordinance which provides for the authorization of election expense agents, some provisions of section 25 become redundant and are repealed.

Allocation of alternative polling stations (Section 30)

10. In order to make allowance for emergency situations, e.g. polling stations being flooded, the newly added section 30(4A) empowers the Chief Electoral Officer (CEO) to designate one or more polling stations to the electors in addition to or in lieu of the assigned polling station if the CEO considers it appropriate to do so in the circumstances.

Preparation for polling (Section 37)

11. Section 37(2) as amended stipulates that the ballot paper is not to contain the name and other information of any candidate who is found before the polling day to have died or be disqualified. If such information has already been printed on the ballot paper, it must be crossed out by stamping the words “已故” and “DECEASED” or “喪失資格” and “DISQUALIFIED” as the case may require.

Marking of ballot papers (Sections 37, 55, 56 and 57)

12. Given that the use of a chop with a tick "✓" was well received in the 1999 DC election, the EAC has decided that it should continue to be used to mark the choice of candidate on GC and FC ballot papers (except those of the SFCs described below). Section 37(6) as amended requires the CEO to provide, among others, the necessary number of chops at each

polling station to enable electors to mark their ballot papers. Sections 55 and 57 as amended seek to specify how the ballot papers of GC and FC (except those of the SFCs described below) should be marked. Section 56 as amended makes it clear how ballot papers of the Heung Yee Kuk, agriculture and fisheries, insurance, and transport functional constituencies (SFCs) are to be marked.

Canvassing activities in no canvassing zone (NCZ) (Section 40)

13. The newly added section 40(16)(ca) prohibits, without reasonable excuse, the display, unless for the purpose of door-to-door canvassing set out in paragraph 14 below, any badge, emblem or clothing in the NCZ which :

- (a) may promote or prejudice the election of a candidate or candidates at the election; or
- (b) makes direct reference to a body any member of which is standing as a candidate in the election or to a political body in Hong Kong.

14. Having regard to the purpose that designation of NCZ was primarily to maintain a free and clear passage for electors to attend and leave a polling station, the newly added section 40(17) allows door-to-door canvassing on the storeys above or below street level in a building within a NCZ other than a building in which there is a polling station on the polling day provided that it does not pose any obstruction to electors and no amplifying device is used.

Admission to polling station (Section 44)

15. To provide more flexibility for voters, the improved section 44(13) provides that if a person who is accompanied by a child arrives at a polling station for the purpose of voting, the Presiding Officer (PRO) may permit the child to enter the polling station provided that the child will not disturb or cause inconvenience to other persons inside the polling station.

Offences at a polling station (Section 45)

16. Section 45(2) is replaced with a new provision so that in addition to the Presiding Officer, the RO of the relevant constituency or the EC election, or a member of the EAC may authorize photographing, filming and making video or audio recording inside a polling station.

17. Section 45(5) is amended so that a person commits an offence only if he or she, on polling day, without reasonable excuse, displays a badge, emblem or any clothing which :

(a) may promote or prejudice the election of a candidate or candidates at the election; or

(b) makes direct reference to a body any member of which is standing as a candidate in the election or to a political body in Hong Kong, within a polling station.

PRO to issue one or more ballot papers depending on the entitlement to vote (Sections 30 and 53)

18. Section 30(4) as amended provides that voting for the four SFCs described in paragraph 12 above can only take place at the four polling stations assigned for the EC election. Section 53(4) and (5) is also consequentially amended to ensure that the correct ballot paper will be issued under the new arrangement.

Procedure for voting (Section 54)

19. Section 54(6) provides that a person must not remove a ballot paper from a polling station except where it is provided otherwise in the EAC (EP)(LC)R. That section is amended so that a person commits an offence if he or she removes a ballot paper from a polling station. The penalty is a fine at level 2 and an imprisonment for 6 months.

Offences at a counting station (Section 68A)

20. The newly added section 68A stipulates that it is an offence for a person to film or take photograph or make audio or video recording within a counting zone during counting of votes except with the express

permission the Chief Returning Officer (CRO) and the concerned RO or a member of the EAC.

(C) Amendments for new counting arrangements

Counting arrangements (Sections 70,72,74-74B)

21. The EAC has conducted a public consultation exercise to solicit views on the ways to conduct the count for the 2000 LegCo elections. Having carefully considered all the options, the EAC has decided to set up:

- (a) one counting station at each of the 5 GCs to count GC ballot papers; and
- (b) one central counting station to count all FC and EC ballot papers.

22. Section 70 is replaced with a new provision that requires the PRO of a polling station to deliver or arrange to be delivered to the relevant counting station, as the case may be, the ballot boxes, together with the sealed packets and the ballot paper accounts prepared by that officer. Section 72 as amended requires ballot boxes delivered to a counting station to be given in the charge of the relevant RO. Section 74 as amended and the newly added section 74A set out the arrangements for separating ballot papers and verifying ballot paper account at the counting station at a general election. The newly added section 74B provides for the arrangements for verification of ballot paper account at the counting station at a by-election.

(D) Other amendments

Free postage services (Section 101A)

23. Under section 43 of LegCo Ordinance, a list of validly nominated candidate for a GC or a validly nominated candidate of the EC or any FC is entitled to send two letters free of postage to each elector in the constituency or EC for which he or she is validly nominated. The newly added section 101A sets out the limitations on the postal materials that may be sent to electors by a candidate free of charge. The candidate

must provide a specimen to the Postmaster General and make a declaration that the postal materials are identical with the specimen. It further stipulates that the candidate is liable for payment of postage if the postal materials do not comply with the requirements or the declaration is false.

Election advertisements (Section 102)

24. Section 102 imposes requirements to be complied with by a candidate in relation to election advertisements. Subsection (10) as amended requires a candidate to deposit a copy of the written consent of support with the relevant RO before the display of election advertisement. The newly added subsection (15) lists out certain election advertisements that are exempted from the requirement of numbering.

EC Subsector Elections and Nominations for the Religious Subsector (Schedule 1)

25. Schedule 1 provides for the conduct of the EC subsector elections and nominations for the religious subsector. Section 65 of the Regulation mainly seeks to amend the subsector election procedures to mirror those of LegCo elections except, among others, the use of “✓” chops, the new counting arrangement, and the procedures relating to the death or disqualification of a validly nominated candidate that comes to the knowledge of the RO.

Technical amendments

26. We have also taken the opportunity to propose some technical amendments to the existing EAC(EP)(LC)R for the better carrying out of the EAC(EP)(LC)R.

PUBLIC CONSULTATION

27. The public has been consulted on the EAC’s “Proposed Counting Arrangements for the 2000 Legislative Council Elections” from 7 January to 9 February 2000 and “Proposed Guidelines in Election-related Activities in respect of the 2000 Legislative Council Elections” from 1 to 29 February 2000. The EAC has considered the public views before making the Regulation.

BASIC LAW IMPLICATIONS

28. 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

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

FINANCIAL AND STAFFING IMPLICATIONS

30. Any additional resource requirement arising from the proposed Amendment Regulation will be absorbed by the funds earmarked for conducting the 2000 LegCo elections.

LEGISLATIVE TIMETABLE

31. The Regulation will be published in the Gazette on 17 March 2000. It will be tabled in the Legislative Council on 29 March 2000 and will come into operation on 5 May 2000.

PUBLICITY

32. 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.