

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541) Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003

INTRODUCTION

On 12 May 2003, the Electoral Affairs Commission (“EAC”) made the Electoral Affairs Commission (Electoral Procedure) (District Councils) (Amendment) Regulation 2003 (“the Amendment Regulation”) which -

- (a) provides for the counting of votes at a polling station after the close of poll;
- (b) improves the existing provisions on the handling of questionable ballot papers; and
- (c) makes other necessary amendments to streamline the electoral arrangements.

This brief informs Members of the main provisions of the Amendment Regulation.

BACKGROUND

2. The Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (“the existing Regulation”) is made by the EAC to provide for the procedural arrangements for the District Councils (“DCs”) elections. From the experience gained since the 1999 DCs election, the EAC considers that a number of improvements can be made to the electoral arrangements. Among other things, the EAC considers that the counting process can be speeded up by -

- (a) conducting the counting of votes at individual polling stations after the close of poll; and

- (b) improving the existing provisions on the handling of questionable ballot papers so that ballot papers that are clearly invalid (see paragraph 6) need not be treated as questionable, as is required under the existing provision.

Proposed counting arrangement

3. Under existing arrangements, after the close of poll, ballot boxes at individual polling stations are delivered to district counting stations where the counting of votes will take place.

4. As there have been suggestions that vote counting process could be conducted more efficiently if it is performed at polling stations immediately after the close of poll, we have tried out, as a pilot, the counting of votes at polling stations in three recent DC by-elections (i.e. the Kai Tak constituency by-election on 3 November 2002, the Hoi Sham constituency by-election on 9 February 2003, and the Mei Foo constituency by-election on 6 April 2003). After the close of poll, the polling station was closed and converted into a counting station in about 30 minutes. The counting station was then opened to admit the public and the media to observe the count. The count took about 50 to 75 minutes to complete, depending on the number of votes cast in the constituency concerned. Election result was announced at around 12:00 midnight.

5. Under this arrangement, ballot boxes no longer have to be transported after the close of poll from polling stations to counting stations for the purpose of vote counting. The arrangement has the following advantages -

- (a) the efficiency of the vote counting process could be enhanced, and election results could be announced earlier;
- (b) security risks arising from the need to transport ballot boxes from polling stations to counting stations could be eliminated; and
- (c) resources needed for the appointment of counting staff and the delivery of ballot boxes from polling stations to counting stations could be saved.

Invalid ballot papers

6. As the existing Regulation now stands, a ballot paper is set aside as a questionable ballot paper if -

- (a) it is endorsed on the front with the word “TENDERED”;
- (b) it is endorsed on the front with the word “SPOILT”;
- (c) it is unused;
- (d) it is unmarked;
- (e) it is not marked by the chop provided;
- (f) votes are given for more than one candidate;
- (g) the chop on it is not affixed to give a single “✓ ” in the circle opposite the name of the candidate of the elector’s choice;
- (h) there is writing or a mark by which the elector can be identified;
- (i) it is substantially mutilated; or
- (j) the elector’s intention is uncertain.

The Returning Officer (“RO”) will decide whether a questionable ballot paper should be counted. A candidate or his election agent may raise objection to the admission or rejection of a questionable ballot paper but the final decision rests with the RO. Although all ballot papers which fall under categories (a) to (j) are treated as questionable ballot papers, those in categories (a) to (f) are by their nature clearly invalid. Indeed, in past elections, no objections have ever been raised to these categories of ballot papers being ruled invalid by the RO.

7. In the 1999 DCs election, ballot papers referred to in paragraph 6 (a) to (f) above constituted more than 86% of all the questionable ballot papers. They were in fact clearly invalid but for the current statutory provisions, they have been treated as questionable and determined one by

one by the RO. The truly questionable ballot papers referred to in paragraph 6 (g) to (j) averaged only 1.7 ballot papers per polling station.

8. In the light of the above consideration and the proposed improvement mentioned in paragraph 2(b), the EAC considers that the responsibility of supervising the counting of votes at the polling station and determining questionable ballot papers can be delegated to the Presiding Officer (“PrO”) of the polling station.

AMENDMENT REGULATION

9. The Amendment Regulation is at **Annex**. The major amendments are to provide for new arrangements as elaborated in the following paragraphs.

Counting of Votes at Polling Stations

(sections 19, 21 and 22 of the Amendment Regulation)

10. Having regard to the success of the pilot described in paragraphs 4 and 5 above, the EAC proposes to adopt decentralized counting arrangement in the 2003 DCs election such that counting of votes will be carried out in polling stations after the close of poll. To uphold the principle of fair, open and honest elections, the existing re-counting mechanism will be maintained, and members of the public will continue to be allowed to observe the counting process. Details of the counting arrangement are set out below.

Converting a polling station to a counting station

(sections 11 and 19 of the Amendment Regulation)

11. Immediately after the close of poll, a polling station will be converted into a counting station and the count will be performed by the polling staff. During the conversion, the candidates and their agents will be allowed to be present to observe the conversion. The PrO, who is also the official in charge of the operation of the polling station during the day, will take up the role of supervising the counting of votes which in previous elections was a responsibility of the RO.

A constituency with one polling station only
(section 28 of the Amendment Regulation)

12. Upon completion of vote counting, the PrO will make known the counting result to the candidates and their agents present at the polling station. Candidates or their election agents may request a re-count, if such is considered necessary. The PrO shall comply with the request unless he considers it unreasonable.

13. After obtaining the final counting or re-count result, the PrO will make known the result to the candidates and their agents present at the polling station. He will also inform the RO of the constituency of the result.

A constituency with two or more polling stations
(section 28 of the Amendment Regulation)

14. The polling station serving the largest number of registered electors will be designated by the Chief Electoral Officer as the dominant counting station. Detailed arrangements will be as follows -

- (a) upon completion of vote counting at individual counting stations, the PrO of each counting station will make known the counting result to the candidates and their agents present at the counting station. Candidates or their election agents or counting agents may request a re-count, if such is considered necessary. The PrO shall comply with the request unless he considers it unreasonable;
- (b) the PrO of the non-dominant counting station will inform the PrO of the dominant counting station of the counting result or re-count result of his counting station;
- (c) the PrO of the dominant counting station will then make known the overall counting or re-count results for the constituency to the candidates and their agents present at the dominant counting station;
- (d) the candidates or their election agents may request the PrO of the dominant counting station to re-count all the votes of all the counting stations for the constituency. The PrO shall comply with the request unless he considers it unreasonable;

- (e) upon completion of re-counting, the PrO of each of the non-dominant counting stations will make known the result at his counting station to the candidates and their agents present at that counting station and to the PrO of the dominant counting station;
- (f) the PrO of the dominant counting station will make known all re-count results to the candidates and their agents present at the dominant counting station;
- (g) the PrO of non-dominant counting stations will inform the RO of the constituency of the final counting or re-count result of his counting station; and
- (h) the PrO of the dominant counting station will inform the RO of both the final counting or re-count result of his station and the overall final counting or re-count results for the constituency.

15. The RO will check the overall final counting or re-count results obtained from the PrO of the dominant counting station against all the results obtained from individual counting stations to ensure accuracy of the final result for the constituency.

Declaration of result by the RO

(sections 28, 29 and 30 of the Amendment Regulation)

16. After obtaining the final counting or re-count result, the RO will sign and display a notice declaring the result of the election in a prominent place outside his office. He will also arrange for the publication of the notice in the Gazette.

17. In the event that two or more candidates have equal highest numbers of votes in the final counting, the candidates will be invited to the office of the RO where the RO will determine the result of the election by drawing lots.

Questionable and Invalid Ballot Papers

(sections 23, 25, 26 and 27 of the Amendment Regulation)

18. To further enhance the efficiency of the vote counting process, the ballot papers under categories (a) to (f) in paragraph 6 above will in future be regarded as invalid and not be counted. They will not be subject to the objection of candidates or their agents. Ballot papers under categories (g) to (j) will continue to be treated as questionable ballot papers and dealt with according to existing procedures. Candidates or their election agents or counting agents may raise objection to the admission or rejection of these ballot papers. The PrO will be responsible for making a final decision on their validity.

Other revised electoral arrangements

19. The following changes are also introduced to streamline other electoral arrangements -

- (a) a candidate may appoint not more than two counting agents for each counting station to monitor the counting of votes (*the existing Regulation provides that the EAC may determine the maximum number of counting agents that a candidate may appoint*); (*section 13 of the Amendment Regulation*)
- (b) an elector who has been issued with a ballot paper but who has to leave the polling station before casting his vote may, on reasonable grounds and with the permission of the PrO, return to the polling station before the close of poll to cast his vote. Before leaving the polling station, the elector must return his ballot paper, unmarked, to the PrO (*a new provision to streamline the casting of votes*); (*section 10 of the Amendment Regulation*)
- (c) a PrO may be authorized by the RO to vary the no canvassing zone and the no staying zone on polling day by displaying a notice at or near the polling station; (*section 33 of the Amendment Regulation*)
- (d) candidates will be required to furnish copies of election advertisements and authorization to the ROs before they

display the election advertisements (*the existing Regulation only requires candidates to provide the copies not later than 7 days after the display, and this has sometimes caused difficulties for ROs in dealing efficiently with complaints relating to advertisements which have been displayed.*); (*section 38 of the Amendment Regulation*) and

- (e) candidates will not be required to provide the registered residential address of their subscribers on the nomination papers (*subscribers' identity card numbers are already sufficient in helping the RO determine the eligibility of the subscribers and the validity of the subscriptions.*) (*section 3 of the Amendment Regulation*)

PUBLIC CONSULTATION

20. On 24 April 2003, the Administration consulted the Panel on Constitutional Affairs of the Legislative Council (LegCo) on the proposed decentralized counting arrangement and the arrangement for the handling of questionable ballot papers. Members of the Panel generally supported the arrangement. Separately, the EAC issued the "Proposed Guidelines on Election-related Activities in respect of the District Councils Election ("Proposed Guidelines") on 28 April 2003 for a one month public consultation. The Proposed Guidelines covers, amongst others, the proposed arrangements for decentralized counting and the handling of questionable ballot papers, as well as the other revised electoral arrangements outlined in paragraph 19. It is expected that potential candidates and the public alike would welcome the proposed counting arrangement which should enable election results to be declared quicker after the close of poll. Likewise, it is expected that they would not object to the other proposed electoral arrangements which would facilitate the conduct of elections.

IMPLICATIONS OF THE AMENDMENT REGULATION

21. The financial implications of the proposed arrangement of counting votes at polling stations are insignificant when compared to the total estimated expenditure for DC elections. The Amendment Regulation is in conformity with the Basic Law, including the provisions

concerning human rights. It has no staffing, productivity, environmental or sustainability implications.

LEGISLATIVE TIMETABLE

22. The Amendment Regulation will be published in the Gazette on 16 May 2003 and tabled in the Council on 21 May 2003.

PUBLICITY

23. A press release will be issued to announce the publication of the Amendment Regulation in the Gazette. A spokesman will be available for answering media enquiries.

Registration and Electoral Office
May 2003

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE)
(DISTRICT COUNCILS)(AMENDMENT) REGULATION 2003**

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

1. Commencement

This Regulation shall come into operation on 11 July 2003.

2. Interpretation

Section 2 of the Electoral Affairs Commission (Electoral
Procedure)(District Councils) Regulation (Cap. 541 sub. leg. F) is
amended -

(a) in subsection (1) -

- (i) by repealing the definition of "Chief
Returning Officer";
- (ii) in the definition of "counting zone" -
 - (A) by repealing "Chief Electoral Officer"
and substituting "Presiding Officer";
 - (B) in the Chinese text, by repealing the
semicolon at the end and substituting a
full stop;
- (iii) by repealing the definition of "district
counting station";
- (iv) by adding -

"dominant counting station" (主要點票站)

means a place designated as a
dominant counting station under
section 31;

"head-dress" (頭飾) means anything which
is worn on a person's head;

"political body" (政治性團體) means -

- (a) a political party or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election;"

(b) by repealing subsection (3)(a).

3. How to nominate a candidate for a constituency

Section 12(8) is amended by repealing ", identity document number and registered residential address" and substituting "and identity document number".

4. Chief Electoral Officer to designate polling stations, counting stations and dominant counting stations

Section 31 is amended -

(a) by adding -

"(1A) The Chief Electoral Officer may designate under subsection (1) the same place as a polling station and a counting station.

(1B) If in relation to a constituency, 2 or more counting stations, which are also polling stations, have been designated, the Chief Electoral Officer must designate the polling station at which the largest number of electors are to vote as the dominant counting station for that constituency.";

- (b) in subsection (6), by repealing "polling stations and counting stations" and substituting "polling stations, counting stations and dominant counting stations";
- (c) by repealing subsection (9).

5. Returning Officer to determine no canvassing zones and no staying zones

Section 43 is amended -

- (a) in subsection (13) -
 - (i) in paragraph (c), by repealing "or" at the end;
 - (ii) by adding -
 - "(ca) conduct any activity for canvassing votes, so that the sound of the activity can be heard in the no canvassing zone;
 - (cb) subject to subsection (15), without reasonable excuse, display or wear in the no canvassing zone any badge, emblem, clothing or head-dress which -

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

(ii) 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; or";

(b) by repealing subsection (14) and substituting -

"(14) A person may, on polling day, canvass from door to door, without obstructing any person, on the storeys above or below street level, in a building within the no canvassing zone, which -

(a) the person is allowed to enter for the purpose of canvassing votes; and

(b) has no polling station inside it.

(15) A person may, for the purpose of canvassing votes as described in subsection (14), display or wear any badge, emblem, clothing or head-dress referred to in subsection (13)(cb).".

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

Section 44 is amended -

(a) in subsection (1) -

(i) in paragraph (c), by repealing "or" at the end;

(ii) by adding -

"(ca) conduct any activity for canvassing votes, so that the sound of the activity can be heard in the no canvassing zone;

(cb) subject to subsection (1B), without reasonable excuse, display or wear in the no canvassing zone any badge, emblem, clothing or head-dress which -

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

(ii) 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; or";

(b) by adding -

"(1A) A person may, on polling day, canvass

from door to door, without obstructing any person, on the storeys above or below street level, in a building within the no canvassing zone, which -

(a) the person is allowed to enter for the purpose of canvassing votes; and

(b) has no polling station inside it.

(1B) A person may, for the purpose of canvassing votes as described in subsection (1A), display or wear any badge, emblem, clothing or head-dress referred to in subsection (1)(cb)."

7. Candidates may appoint polling agents

Section 45(5) is amended by repealing "3 working" and substituting "7".

8. Who may enter or be present at a polling station

Section 47(4) is amended -

(a) in paragraph (e), by adding "and members of the Civil Aid Service" after "officers";

(b) in paragraph (f), by repealing "or" at the end;

(c) in paragraph (g), by repealing the full stop at the end and substituting "; or";

(d) by adding -

"(h) a person authorized in writing by the Returning Officer to act as a liaison officer."

9. What constitutes an offence at a polling station

Section 48 is amended -

- (a) in subsection (1), by repealing "Presiding Officer" and substituting "Returning Officer, Assistant Returning Officer, Presiding Officer, Deputy Presiding Officer or Assistant Presiding Officer";
- (b) by repealing subsection (5) and substituting -
 - "(5) A person who, on polling day, displays or wears in the no canvassing zone, without reasonable excuse (except as provided in section 43(15)), any badge, emblem, clothing or head-dress 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, commits an offence.";
- (c) in subsection (6)(a), by adding "and an Assistant Returning Officer for the constituency or constituencies for which the polling station is used" after "Returning Officer";
- (d) by repealing subsection (8).

10. Section added

The following is added -

"56A. Elector who has not cast vote may return to cast vote with permission

(1) Subject to subsection (5), if -

(a) an elector has been issued with a ballot paper;
and

(b) he or she has left the polling station without casting his or her vote,

he or she shall not cast the vote when he or she returns to the polling station before the close of the poll unless -

(c) before leaving the polling station, he or she has

-

(i) made a request to the Presiding Officer for permission to cast the vote before the close of the poll;

(ii) informed the Presiding Officer of his or her reason for leaving the polling station without casting the vote; and

(iii) returned the ballot paper, unmarked, to the Presiding Officer; and

(d) the Presiding Officer has granted the requested permission.

(2) If an elector has complied with subsection (1)(c), the Presiding Officer must grant the permission unless he or she is of the opinion that the request is a manifest abuse of the facilities provided by this section.

(3) If the Presiding Officer grants the permission to an

elector under subsection (2), he or she must -

- (a) keep in his or her custody the ballot paper returned by the elector under subsection (1)(c)(iii); and
- (b) on the elector's return to the polling station before the close of the poll to cast the vote, re-issue the ballot paper to the elector in the presence of a police officer.

(4) If the Presiding Officer does not grant the permission to an elector under subsection (2), he or she must immediately re-issue to the elector the ballot paper returned under subsection (1)(c)(iii).

(5) An elector who -

- (a) has been issued with a ballot paper;
- (b) becomes incapacitated from voting by physical illness; and
- (c) has left the polling station after -
 - (i) returning the ballot paper, unmarked, to the Presiding Officer; or
 - (ii) leaving the ballot paper, unmarked, behind in the polling station without putting the ballot paper into the ballot box (if the Presiding Officer is aware that the elector has so left the ballot paper behind before leaving the polling station),

may return to the polling station before the close of the poll and cast his or her vote.

(6) If any ballot paper is returned under subsection (5)(c)(i) or left behind in the polling station under subsection (5)(c)(ii) by an elector, the Presiding Officer must -

- (a) keep in his or her custody the ballot paper; and
- (b) on the elector's return to the polling station before the close of the poll to cast the vote, re-issue the ballot paper to the elector in the presence of a police officer.

(7) For the purposes of this Regulation, re-issuing a ballot paper under subsection (3), (4) or (6) shall be regarded as issuing a ballot paper under section 56(1)."

11. Steps to be taken at a polling station at the close of the poll

Section 63(1) and (2) is repealed and the following substituted -

"(1) As soon as practicable after the close of the poll at a polling station which is also designated as a counting station, the Presiding Officer must display a notice in a prominent place outside the polling station stating that the poll has been closed and that it will be opened when it is ready for use for the counting of votes.

(1A) A candidate and an election agent and a counting agent of such candidate may stay in a polling station referred to in subsection (1) while it is closed for the preparation for the counting of votes.

(2) After complying with subsection (1), the Presiding Officer must, in the presence of the persons, if any, who are

present within the polling station, take the following steps -

- (a) place the ballot box or boxes where that Officer and other persons who are present within the polling station can see them;
- (b) cover each ballot box with a device provided for that purpose so that a ballot paper or any other material cannot be introduced into or withdrawn from the ballot box after it is covered;
- (c) use a padlock to keep the device secured in position;
- (d) seal each ballot box; and
- (e) 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.

(2A) The Presiding Officer must, after complying with subsection (2), keep the sealed ballot box or boxes under that Officer's control until the counting of votes begins."

12. Presiding Officer to give notice of time and place of the counting of votes to candidates

Section 65 is amended -

- (a) in subsection (1) -
 - (i) by repealing "Returning Officer" and substituting "Presiding Officer";
 - (ii) by repealing "the votes for a constituency" and substituting "votes";

- (b) by repealing subsections (3), (4) and (7);
- (c) by adding -

"(8) The Presiding Officer must, before the counting of votes begins, display a notice in a prominent place outside the counting station stating the time that the counting station will be opened to the public to observe the counting of votes."

13. Candidates may appoint counting agents

Section 66 is amended -

- (a) by repealing subsection (2) and substituting -

"(2) The maximum number of counting agents that a candidate may appoint for one counting station is 2.";

- (b) in subsection (4), by repealing "3 working" and substituting "7";
- (c) in subsection (5), by repealing "Returning Officer" and substituting "Presiding Officer";
- (d) in subsection (7), by adding "or the Presiding Officer, as may be appropriate" after "Returning Officer";
- (e) in subsection (11), by adding "or the Presiding Officer, as may be appropriate" after "Returning Officer".

14. Chief Electoral Officer to appoint counting officers

Section 67(1) and (2) is amended by repealing "Returning

Officer" wherever it appears and substituting "Presiding Officer".

15. Who may be present at the counting of votes

Section 68 is amended -

- (a) in subsection (1), by repealing "Chief Returning Officer, Returning Officer, Assistant Returning Officers" and substituting "Returning Officer, Assistant Returning Officers, Presiding Officer, Deputy Presiding Officer and Assistant Presiding Officers";
- (b) in subsection (2), by repealing "Chief Returning Officer or the Returning Officer" and substituting "Returning Officer or the Presiding Officer";
- (c) in subsection (3), by repealing "Chief Returning Officer and the Returning Officer are" and substituting "Presiding Officer is";
- (d) in subsection (4), by repealing "Returning Officer" and substituting "Presiding Officer";
- (e) in subsection (5) -
 - (i) by repealing "Chief Returning Officer" and substituting "Presiding Officer";
 - (ii) by repealing "without disrupting the count and prejudicing the secrecy of the individual votes" and substituting "to do so without prejudicing the secrecy of the individual votes and considers that it will not cause disorder or disturbance in the

counting station".

16. What constitutes an offence at a counting station

Section 69 is amended -

- (a) by repealing subsection (1)(a) and substituting -
 - "(a) the relevant Returning Officer or Presiding Officer; or";
- (b) in subsection (2), by repealing "Chief Returning Officer or the Returning Officer" and substituting "Presiding Officer".

17. Presiding Officer to keep order at the counting station

Section 70 is amended -

- (a) in subsection (1), by repealing "Chief Returning Officer and the other Returning Officers" and substituting "Presiding Officer";
- (b) in subsection (2) -
 - (i) in paragraph (a), by repealing "Chief Returning Officer" and substituting "Presiding Officer";
 - (ii) in paragraph (b), by repealing "Returning Officer" and substituting "Presiding Officer";
- (c) in subsection (3), by repealing "Chief Returning Officer or the Returning Officer, as may be appropriate" and substituting "Presiding Officer".

18. Ballot boxes to be delivered to the district counting station

Section 71 is repealed.

19. Arrangements for the supervision of counting stations and counting zones

Section 72 is amended -

(a) by repealing subsection (1);

(b) by repealing subsections (2) and (3) and substituting -

"(2) The Presiding Officer is to supervise the counting station and the counting zone.

(3) The Presiding Officer may have one Deputy Presiding Officer and one or more Assistant Presiding Officers to assist him or her.".

20. Delivered ballot boxes to be taken to relevant counting zones at the district counting station

Section 73 is repealed.

21. Presiding Officer to open ballot box

Section 74 is amended -

(a) in subsection (1), by repealing "A Returning Officer into whose charge a ballot box is given must open it by breaking the seal. The Returning" and substituting "A Presiding Officer must open a ballot box in that

Officer's charge by breaking the seal. The Presiding";

- (b) in subsection (2) -
 - (i) by repealing "Returning Officer" and substituting "Presiding Officer";
 - (ii) by adding ", other than a ballot paper," after "any paper".

22. Presiding Officer to verify ballot paper account

Section 75 is amended -

- (a) in subsection (1) -
 - (i) by repealing "Returning Officer" and substituting "Presiding Officer";
 - (ii) by repealing paragraph (a);
 - (iii) by repealing paragraph (b) and substituting -

"(b) after counting the votes in accordance with section 76, verify the number of ballot papers so counted by comparing it with the ballot paper account prepared under section 64 and prepare a statement in writing as to the result of the verification.";

- (b) in subsection (2), by repealing "Returning Officer" and substituting "Presiding Officer".

23. Counting of votes

Section 76 is amended -

(a) in subsection (1) -

(i) by repealing "constituency" where it twice appears and substituting "counting station";

(ii) by repealing "Returning Officer" and substituting "Presiding Officer";

(b) by repealing subsection (2);

(c) by adding -

"(5) In the course of counting in accordance with subsection (4) -

(a) any ballot paper -

(i) which appears to have any writing or mark by which the elector can possibly be identified;

(ii) which appears to be not marked in accordance with section 58(2);

(iii) which appears to be substantially mutilated; or

(iv) which appears to be void for uncertainty,

is questionable and shall be separated and forwarded to the Presiding Officer to decide whether the vote should be counted in accordance with section 79; and

(b) any ballot paper described in section 78(1)(b), (c), (d), (f), (g) and (i) shall be separated and shall not be counted pursuant to section 78."

24. Result of the counting of the votes and re-count

Section 77 is repealed.

25. Ballot papers which are not to be counted when counting the votes

Section 78 is amended -

(a) in subsection (1) -

(i) in paragraph (a), by repealing "the elector can" and substituting "the Presiding Officer considers that the elector can possibly";

(ii) by repealing paragraph (g) and substituting -

"(g) a ballot paper which is not marked in accordance with section 58(1);";

(iii) in paragraph (h) -

(A) by repealing "Returning Officer" and substituting "Presiding Officer";

(B) by repealing the full stop at the end and substituting "; or";

(iv) by adding -

"(i) which contains votes for more than 1 candidate.";

(b) by repealing subsection (2) and substituting -

"(2) A candidate, an election agent or a counting agent is not entitled to inspect and make representations to the Presiding Officer concerning a ballot paper referred to in subsection (1)(b), (c), (d), (f), (g) and (i).";

(c) in subsection (3), by repealing "Returning Officer" and substituting "Presiding Officer".

26. Presiding Officer to make decisions on questionable ballot papers

Section 79 is amended -

(a) by repealing subsections (1), (2) and (3) and substituting -

"(1) If a ballot paper is forwarded to the Presiding Officer under section 76(5)(a), a candidate, an election agent or a counting agent, if present at the counting zone, may inspect and make representations to the Presiding Officer concerning the ballot paper.

(2) After considering the representations (if any) made under subsection (1), the Presiding Officer shall determine whether the ballot paper -

(a) is valid and the vote shall be counted; or

(b) shall not be counted pursuant to section 78 for -

- (i) having on it any writing or mark by which, in that Officer's opinion, the elector can possibly be identified;
- (ii) subject to subsection (3), being a ballot paper not marked in accordance with section 58(2);
- (iii) being a ballot paper which is substantially mutilated; or
- (iv) being void for uncertainty.

(3) In the case of a ballot paper which is not marked in accordance with section 58(2), if the Presiding Officer is satisfied that the intention of the elector is clear notwithstanding the deviation from the requirement in section 58(2), the Presiding Officer may count that ballot paper.";

(b) in subsection (4) -

- (i) by repealing "Returning Officer" and substituting "Presiding Officer";
- (ii) by adding "questionable" before "ballot paper";
- (iii) by repealing "Returning Officer's" and

substituting "Presiding Officer's";

(c) in subsection (5) -

(i) by repealing "Returning Officer" and substituting "Presiding Officer";

(ii) by adding "questionable" after "count a";

(d) in subsection (6) -

(i) by repealing "Returning Officer" and substituting "Presiding Officer";

(ii) by repealing "which that Officer decides under this section to be ballot papers" and substituting "referred to in section 78(1)";

(iii) in paragraph (a), by adding "possibly" after "can";

(iv) in paragraph (g), by repealing "and" at the end;

(v) in paragraph (h), by repealing the full stop at the end and substituting "; and";

(vi) by adding -

"(i) a ballot paper which contains votes for more than 1 candidate."

27. Presiding Officer's decision on a ballot paper to be final

Section 80 is amended by repealing "Returning Officer" and substituting "Presiding Officer".

28. Sections added

The following are added -

**"80A. Result of the counting of
votes and re-count: one
counting station**

(1) This section applies where there is only one counting station for a constituency.

(2) After the votes are counted under section 76, the Presiding Officer must make known the result of the counting of votes to the candidates who are present at the counting zone.

(3) If the candidates are not present, the Presiding Officer is to make known the result to their election agents or counting agents, if those agents are present at the counting zone.

(4) A candidate who is present at the counting zone when the votes are counted or re-counted, or an election agent who is so present, may request the Presiding Officer to count again the counted votes or re-counted votes.

(5) If a request is made under subsection (4), that Presiding Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(6) After a counting of votes or re-count is completed, nothing further is to be done until each candidate who is present at the completion of the counting of votes or re-count, or the election agent of each candidate if present at the completion of the counting of votes or re-count, is given a reasonable opportunity to make a request for a re-count.

(7) Where there is no request for a re-count or such request is rejected by the Presiding Officer or the re-count is completed and there is no request for a further re-count or the

request for a further re-count has been rejected by the Presiding Officer, the Presiding Officer must report to the Returning Officer for the constituency the result of the counting of votes and re-count (if any).

80B. Result of the counting of votes and re-count: 2 or more counting stations

(1) This section applies where there are 2 or more counting stations for a constituency.

(2) After the votes are counted under section 76, the Presiding Officer of the relevant counting station must make known the result of the counting of votes at that counting station to the candidates who are present at the counting zone.

(3) If the candidates are not present, the Presiding Officer is to make known the result to their election agents or counting agents, if those agents are present at the counting zone.

(4) A candidate who is present at the counting zone when the votes are counted or re-counted, or an election agent or a counting agent who is so present, may request the Presiding Officer to count again the counted votes or re-counted votes.

(5) If a request is made under subsection (4), that Presiding Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(6) After a counting of votes or re-count is completed, nothing further is to be done until each candidate who is present at the completion of the counting of votes or re-count, or the election agent or counting agent of each candidate if

present at the completion of the counting of votes or re-count, is given a reasonable opportunity to make a request for a re-count.

(7) Where there is no request for a re-count or such request is rejected by the Presiding Officer or the re-count is completed and there is no request for a further re-count or the request for a further re-count has been rejected by the Presiding Officer, the Presiding Officer of each counting station must report to the Presiding Officer of the dominant counting station and the Returning Officer for the constituency the result of the counting of votes and re-count (if any).

(8) After the Presiding Officer of the dominant counting station has been notified of the results of the counting of votes of all the counting stations for the constituency, that Officer must make known the results to the candidates or their election agents or counting agents who are present at the dominant counting station. If a candidate or his or her election agent who is present at the dominant counting station requests the Presiding Officer of that counting station to re-count all the votes of all the counting stations for the constituency, that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(9) If the Presiding Officer of the dominant counting station decides to comply with the request referred to in subsection (8), that Officer must conduct a re-count at the dominant counting station and inform the Presiding Officers of the other counting stations for the constituency to conduct a re-count at their respective counting station at the same time.

(10) The Presiding Officer of each of the other counting stations for the constituency must make known the result of the re-count at that Officer's counting station to the candidates or their election agents or counting agents who are present at the relevant counting stations and must report that result to the Presiding Officer of the dominant counting station.

(11) The Presiding Officer of the dominant counting station must inform the candidates or their election agents or counting agents who are present at the dominant counting station of all the re-count results.

(12) The Presiding Officer of the dominant counting station must report to the Returning Officer for the constituency the result of the counting of votes and re-count (if any) of all the counting stations including the dominant counting station for such constituency.

80C. Determination of result in the event of equality of votes

(1) If in relation to a constituency, 2 or more of the most successful candidates have an equal number of votes, the Returning Officer for the constituency must determine the result of the election by drawing lots as provided in section 41(3) of the District Councils Ordinance (Cap. 547).

(2) In order to invite the candidates referred to in subsection (1) to be present at the office of the Returning Officer for the constituency for conducting the drawing of lots under section 41(3) of the District Councils Ordinance (Cap. 547), the Returning Officer must use the means of contact

provided by those candidates on their nomination forms.

(3) If the Returning Officer fails to contact a candidate under subsection (2), that Officer may draw lots on behalf of the candidate."

29. Returning Officer to declare election result

Section 81(1) is amended by adding "in that Officer's office" after "declare".

30. The form in which Returning Officer is to publish result of election

Section 82(3) is amended by repealing "the counting station" and substituting "that Officer's office".

31. Presiding Officer to seal ballot papers in packets

Section 83 is amended by repealing "Returning Officer" wherever it appears and substituting "Presiding Officer".

32. Section substituted

Section 84 is repealed and the following substituted -

"84. Chief Electoral Officer to receive ballot papers, accounts, packets, etc.

(1) As soon as practicable after declaring the result of the election, the Presiding Officer must send to the Returning Officer for the constituency -

(a) the ballot paper account and verification of the

ballot paper account;

(b) the statement referred to in section 79(6); and

(c) the sealed packets made up under section 83.

(2) As soon as practicable after preparing the notice of the result of the election, the Returning Officer for the constituency must send to the Chief Electoral Officer -

(a) the documents referred to in subsection (1)(a),

(b) and (c);

(b) a copy of the notice of the result of the election;

(c) all nomination forms;

(d) the notices of withdrawal of candidature (if any);

(e) the notices of appointment of election agents, polling agents and counting agents and copies of authorizations of election expense agents; and

(f) any other documents relating to the election specified by the Commission."

33. Returning Officer may perform functions through Assistant Returning Officers and Presiding Officers

Section 90 is amended -

(a) by adding -

"(1A) A Returning Officer may perform any act which that Officer is required or authorized to perform under section 43(7) and (8) through a Presiding Officer.";

(b) in subsection (2) -

(i) in paragraph (a), by adding "or" at the end;

(ii) by repealing paragraph (b).

**34. Electoral Officers, candidates and agents
to make declaration of secrecy**

Section 93(2) is amended by adding "election agent," after "candidate,".

**35. Procedure after election proceedings
are terminated**

Section 95 is amended -

(a) by repealing subsection (3) and substituting -

"(3) When the poll is abandoned under this section, the Presiding Officer at every polling station for the constituency for which the deceased or disqualified candidate was standing for election must take the steps that Officer is required to take under this Regulation for the purpose of -

(a) sealing in packets all the ballot papers in the ballot box or boxes without separating, sorting or counting them or counting the votes; and

(b) separating and sealing the following in 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.";

(b) by repealing subsection (5) and substituting -

"(5) As soon as practicable after sealing the
ballot papers referred to in subsection (3), the
Presiding Officer must deliver to the Returning
Officer for the constituency all the sealed
packets and the ballot box or boxes.".

36. Publication and display of notices, etc.

Section 98 is amended -

(a) in subsection (1), by adding "or Presiding Officer"
after "Returning Officer";

(b) in subsection (2) -

- (i) in paragraph (h), by adding "and" at the end;
- (ii) in paragraph (i), by repealing "; and" at
the end and substituting a full stop;
- (iii) by repealing paragraph (j).

**37. Commission to designate Chief
Returning Officer for each
counting station**

Section 99 is repealed.

38. Election advertisements

Section 103 is amended -

(a) in subsection (5), by repealing "not later than 7 days
after" and substituting "before";

- (b) in subsection (6), by repealing ", not later than 7 days after" and substituting "before";
- (c) in subsection (9), by repealing ", not later than 7 days after" and substituting "before";
- (d) by adding -
 - "(9A) Before displaying, distributing or otherwise using an election advertisement, the candidate must deposit with the Returning Officer a copy of the written consent referred to in section 27(1) or (2) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).";
- (e) by repealing subsection (14) and substituting -
 - "(14) Any unauthorized election advertisement may be seized, disposed of, destroyed, covered or obliterated by the Returning Officer or any person authorized by that Officer.";
- (f) in subsection (15)(c), by repealing "T-shirt, cap, badge or carrier bag" and substituting "badge, carrier bag, clothing or head-dress".

39. Postponement and adjournment of ordinary election and by-elections

Section 6 of Schedule 1 is amended -

- (a) in subsections (1), (2) and (3), by repealing "Returning Officer" and substituting "Presiding Officer";
- (b) by repealing subsection (4).

Made this day of 2003.

WOO Kwok-hing, J.A.
Chairman,
Electoral Affairs Commission

Norman LEUNG Nai-pang
Member,
Electoral Affairs Commission

Elizabeth S.C. SHING
Member,
Electoral Affairs Commission

Explanatory Note

This Regulation amends the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation (Cap. 541 sub. leg. F) ("the Regulation") to -

- (a) provide for the counting of votes at the polling

- station instead of at a district counting station;
- (b) require the Chief Electoral Officer to designate dominant counting stations (section 4);
 - (c) allow any person, on polling day, to carry out canvassing activities on the storeys above or below street level in a building within the no canvassing zone other than a building in which there is a polling station (section 6);
 - (d) change the period for giving notice of appointment of a polling agent to the Returning Officer from 3 working days to 7 days before polling day (section 7);
 - (e) prohibit the display or wearing of any badge, emblem, clothing or head-dress in the no canvassing zone that may promote or prejudice the election of any candidate or 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, unless there is a reasonable excuse for doing so (section 9);
 - (f) allow an elector to postpone his casting of votes on reasonable grounds (section 10);
 - (g) require the Presiding Officer after the close of the poll to display a notice informing the public that the counting station will be opened when it is ready for use for the counting of votes (sections 11 and 12);
 - (h) provide that the maximum number of counting agents that a candidate may appoint for one counting station is 2 (section 13);
 - (i) specify that the Presiding Officer is responsible for

- supervising the counting station and the counting of votes (sections 15, 16, 17, 19, 21, 22 and 23);
- (j) provide that a candidate, an election agent or a counting agent is not entitled to inspect and make representations to the Presiding Officer concerning certain ballot papers which are not to be counted (section 25);
 - (k) provide that the decision of the Presiding Officer on a ballot paper is final (sections 26 and 27);
 - (l) require the Presiding Officer of each polling station to make known the result of the counting of votes and any re-count to the candidates and their agents who are present at the counting station, and report to the Presiding Officer of the dominant polling station (if any) and the Returning Officer for the constituency the result of the counting of votes and any re-count (section 28);
 - (m) require the Returning Officer to declare the result of the election in his office and to display a notice of the result of the election outside his office (sections 29 and 30);
 - (n) require the Presiding Officer to seal the ballot papers after the result of the election has been ascertained (section 31);
 - (o) authorize a Presiding Officer to perform acts which a Returning Officer is required or authorized to perform under the Regulation (section 33);
 - (p) require a candidate to deposit with the Returning

Officer a copy of the written consent of the person or organization supporting the candidate at an election before the candidate displays or distributes any election advertisement (section 38).

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE)
(DISTRICT COUNCILS) (AMENDMENT) REGULATION 2003**

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