

**Subcommittee on Subsidiary Legislation
Relating to 2004 Legislative Council Elections**

**Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) (Amendment) Regulation 2004**

Introduction

This paper sets out the proposed amendments to the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2004 (the “Amendment Regulation”) regarding -

- (a) the prevention of the use of camera-equipped mobile telephones in voting compartments; and
- (b) the arrangements relating to the recounting of votes for the geographical constituencies (“GCs”).

Prevention of the Use of Camera-equipped Mobile Telephones in Voting Compartments

2. At the last Subcommittee meeting held on 17 June 2004, most Members present considered that it would be too harsh to make leaving mobile telephones switched on inside polling stations an offence. Some Members expressed the concern that the new proposal of switching off mobile telephones inside polling stations might be perceived as an unduly draconian measure and might discourage electors from voting in the Legislative Council (LegCo) election to be held in September. Members took the view that the concern of the public was the possibility of individual electors using camera-equipped telephones or other devices to take photographs of ballot papers, and suggested that we should focus matters relating to the protection of the secrecy of the ballot.

3. Having considered Members’ comments, we propose not to further pursue the proposal to make leaving mobile telephones switched on inside polling stations an offence. We will implement administrative measures to encourage electors to switch off their mobile telephones inside polling stations. Polling staff will advise electors to switch off their mobile telephones when issuing ballot papers to them. More prominent signs will also be posted at the polling stations to remind electors to switch off their mobile telephones. It will

continue to be an offence to use mobile telephones or other devices for electronic communication, contrary to the direction of the Presiding Officer not to do so.

4. As regards the concern about taking of photographs of ballot papers, Members will note that under section 45(2) of the EAC (Electoral Procedure) (Legislative Council) Regulation (“the Regulation”), a person who films or takes photographs or makes any audio or video recording within a polling station without express permission commits an offence. Further, section 96 of the Regulation prohibits a number of acts which may infringe the secrecy of votes. The current imprisonment term for committing an offence under section 45(2) or section 96 is three months. To give added deterrent, we proposed at the last meeting of the Subcommittee to increase the imprisonment term under both provisions to six months. The fine level under section 45(2) and section 96 will remain at level 2 (i.e. \$5000). Members present at the last meeting generally supported the proposal. Proposed amendments have been incorporated in the draft Resolution at **Annex A**.

Recounting Arrangements

5. At the last meeting, we informed Members that we intended to further improve the proposed recounting arrangements for GCs. Under our original proposed arrangement, after the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the GC under his charge, he must add up such results together with the counting results in respect of any GC ballot papers found in ballot boxes for functional constituencies (FCs) before he asks if any candidates want to request a recount of the votes of all the counting stations for the GC. No mechanism is provided for candidates to request a recount of the votes of all counting stations before the counting results in respect of the misplaced GC ballot papers (if any) are available.

6. According to the experience of past elections, the number of GC ballot papers misplaced in FC ballot boxes is very small. In the coming election, the number should be further reduced, since the design of the new ballot boxes and new ballot papers will be such that it will not be easy to put the GC ballot papers into FC ballot boxes. The possibility of the overall results of a particular GC being affected by the counting results of misplaced GC ballot papers would be slim. Thus, we consider it reasonable to put in place a mechanism to allow candidates to request a recount of the votes in all counting stations for a GC without the need to wait for the counting results of any misplaced GC ballot papers.

7. We further propose that when the Returning Officer makes known to the candidates the counting results of all the counting stations for the GC, he must also make known to the candidates the estimated number of GC ballot papers misplaced in FC ballot boxes. (The estimated number will be based on information in the ballot paper account.) Candidates may at that point request a recount of the votes of all the counting stations together with the votes of the misplaced GC ballot papers to be conducted after the latter is ascertained. The Returning Officer will not entertain the request if the estimated number of misplaced GC ballot papers is *less* than the difference between the remaining number of votes cast for any two lists of candidates (in which case the counting results of the misplaced GC ballot papers will not affect the overall election results of the GC in question). However, regardless of whether such a condition is met, candidates may request a recount of the votes of all the counting stations once the counting results of these votes are known (re. paragraph 6 above). They may also request a recount of the votes of the misplaced GC ballot papers after they have been notified of the counting results of the misplaced GC papers. The Returning Officer must comply with the request unless he is of the opinion that the request is unreasonable.

8. We have proposed amendments in the draft Resolution at **Annex A** to provide for the revised recounting arrangement for GC.

Other Proposed Amendments

9. At the last meeting, we proposed to raise the threshold for the purpose of defining small polling stations from “200 electors” to “500 electors”. The amendment has been included in the draft Resolution.

10. We have also included some minor textual amendments suggested by the Legal Adviser of the Subcommittee and our Law Draftsman which mainly aim at improving the drafting of the legislation. To facilitate Members’ examination, an extract of the Regulation showing all the proposed amendments is attached at **Annex B**.

11. The draft Resolution is subject to further refinement in the light of Members’ comments and internal clearance within the Administration.

Constitutional Affairs Bureau
23 June 2004

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE)
(LEGISLATIVE COUNCIL)(AMENDMENT) REGULATION 2004

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on July 2004.

RESOLVED that the Electoral Affairs Commission (Electoral Procedure)(Legislative Council)(Amendment) Regulation 2004, published in the Gazette as Legal Notice No. 84 of 2004 and laid on the table of the Legislative Council on 19 May 2004, be amended -

- (a) in section 2(a)(iii)(A), by repealing "" (視何者適用而定)" and substituting "(視何者適用而定)";

(b) in section 14, in the heading, by adding "某" before "地方選區";

(c) in section 19(a), in the new section 28(1B), by repealing "200" and substituting "500";

(d) in section 19(a), in the new section 28(1C), by adding "any of" before "the small polling station";

(e) by adding -

**"27A. Presiding Officer to exhibit
at polling station notice
providing information for
the guidance of electors**

Section 39 is amended by adding -

"(1A) The Presiding Officer of a small polling station must ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station is exhibited outside the small polling station."";

(f) by repealing section 29(a) and substituting -

"(a) in subsection (1) -

(i) in paragraph (a), by repealing "(17)(a)" and substituting

"(17)";

(ii) by adding immediately after paragraph (a) -

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

(iii) in paragraph (ca) -

(A) by repealing "(17)(b)" and substituting "(18)";

(B) by adding "or wear" after "display";

(C) by repealing "or clothing" and substituting ", clothing or head-dress";

(D) by repealing subparagraph (ii) and substituting -

"(ii) makes direct reference to -

(A) a body any member of which is standing as a candidate

in the
election; or
(B) a prescribed
body the
registered
name or
registered
emblem of
which has
been printed
on any
ballot paper
for the
election;
or";";

(g) by repealing section 32(a) and substituting -

"(a) in subsection (1), by repealing "Presiding
Officer" and substituting "Returning
Officer, Assistant Returning Officer,
Presiding Officer or any polling
officer";";

(h) in section 32(b), in the new section 45(2)(b), by
adding "或界別" after "有關選區" where it secondly
appears;

(i) in section 32(d), by repealing the full stop and
substituting a semicolon;

- (j) in section 32, by adding -
 - "(e) in subsection (7), by repealing everything after "an" and substituting -
 - "offence -
 - (a) under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months;
 - (b) under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months."."
- (k) in section 36, in the new section 53A, by adding -
 - "(8) In this section, references to "elector" are to be construed as including an authorized representative.";
- (l) in section 37(c), in the new section 54(3)(a), by repealing "丙";
- (m) in section 37(c), in the new section 54(3)(b), by repealing "丙" where it secondly appears;
- (n) in section 42, in the new section 63A(3), by repealing everything after "boxes" and substituting ", the sealed packets and the ballot paper account

prepared by that Officer to the Presiding Officer of the main counting station.".";

- (o) in section 49(b), in the new section 69(2), by repealing everything after "the counting" where it secondly appears and substituting -

"station,

the Chief Returning Officer or the Returning Officer, as may be appropriate, may order the person to leave the counting station or the vicinity of the counting station, as the case may be, immediately.";

- (p) by repealing section 50(a) and substituting -

"(a) in subsection (1), by repealing everything after "under" and substituting -

"section 28(9)(a) -

- (a) the Presiding Officer of a GC polling station which is also designated as a counting station (other than a main counting station) must deliver or arrange to be delivered to the

central counting station the ballot boxes for the FC ballot papers from that Officer's polling station, together with the sealed packets under section 63 and the ballot paper accounts prepared by that Officer for the functional constituencies; and

(b) the Presiding Officer of a GC polling station which is also designated as a main counting station must, in addition to the ballot boxes, sealed packets and ballot paper accounts referred to in paragraph (a), deliver or arrange to

be delivered to the
central counting
station the relevant
ballot box or boxes,
sealed packets and
ballot paper accounts
delivered to that
Officer under section
63A(3) for the
functional
constituencies." ;

(q) in section 55(c), by adding -

"(ia) in paragraph (a), by repealing "Chief
Returning Officer or to the";

(r) in section 63, in the new section 79A(5), by adding
"under subsection (4)" after "constituency" where
it first appears;

(s) in section 63, by repealing the new section 79A(6),
(7), (8), (9) and (10) and substituting -

"(6) After the Returning Officer has been
notified of the results of the counting of votes of
all the counting stations for the geographical
constituency under subsection (5), that Officer
must make known the results to the candidates or
their election agents or counting agents at the
place specified by the Returning Officer. If a

candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency, that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(6A) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must also make known the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency, if any, to the candidate or their election agents or counting agents at the place specified by the Returning Officer. A candidate or the election agent of the candidate who is present at the specified place may make a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency and the votes recorded on the GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency.

(7) If the Returning Officer decides to comply with the request referred to in subsection (6),

that Officer must require all the Assistant Returning Officers to instruct the Presiding Officers of the polling stations in their respective charge to conduct a re-count at the relevant counting stations forthwith.

(8) The Presiding Officer of each of the counting stations for the geographical constituency must make known the result of the re-count at the counting station to the candidates or their election agents or counting agents who are present at the counting station and must report that result to the relevant Assistant Returning Officer.

(9) After the Assistant Returning Officer has been notified of the results of the re-count of all the counting stations in his charge for the geographical constituency under subsection (8), that Officer must make known the results to the Returning Officer for the geographical constituency.

(10) After the Returning Officer has been notified of the results of the re-count of all the counting stations for the geographical constituency under subsection (9), that Officer must add together-

- (a) such results; and
- (b) the result of the counting of the votes recorded on the GC ballot papers

handed over to that Officer under section 74(8)(c) for the geographical constituency, if any,

and make known the aggregate result to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes referred to in paragraph (b), that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(11) Subject to subsection (12), if the Returning Officer decides to comply with a request referred to in subsection (6A), that Officer must conduct a re-count of -

(a) the votes of all the counting stations in accordance with the steps as described in subsections (7), (8) and (9); and

(b) the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency,

and make known the final result to the candidates or their election agents or counting agents at the

place specified by that Officer.

(12) The Returning Officer must not conduct a re-count under subsection (6A)-

(a) unless the request for such re-count is made immediately after that Officer makes known, under that subsection, the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency; or

(b) if the estimated number of GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency is less than the difference between the numbers of remaining votes cast for any 2 lists of candidates for the geographical constituency, as determined in accordance with the counting system under section 49 of the Legislative Council Ordinance (Cap. 542).";

(t) by adding -

"72A. Enforcement of provisions as to secrecy

Section 96(10) is amended by repealing "3" and substituting "6".";

(u) in section 78, by adding -

"(ba) in section 5(1) and (5), by repealing "or section 18 of Schedule 2 to that Ordinance";";

(v) by repealing section 78(c)(i) and substituting -

"(i) in subsection (1) -

(A) by repealing "or section 18 of Schedule 2 to that Ordinance";

(B) by adding "or the Presiding Officer, as may be appropriate," after "Returning Officer";".

Clerk to the Legislative Council

2004

Annex B

Section:	28	Chief Electoral Officer to designate polling stations and counting stations	L.N. 65 of 2000	05/05/2000
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(1) The Chief Electoral Officer must designate, by notice published in the Gazette, one or more places for-

- (a) conducting a poll in respect of an election; and
- (b) counting of the votes.

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

(1B) The Chief Electoral Officer must designate a polling station at which less than ~~200500~~ electors are allocated to vote as a small polling station.

(1C) If in relation to a geographical constituency, 2 or more polling stations have been designated and one or more than one of them is a small polling station, the Chief Electoral Officer must designate a polling station, not being a small polling station, as a main counting station for the purpose of counting the votes cast at the polling station and any of the small polling station or stations, as the case may be.

(2) The Chief Electoral Officer may designate under subsection (1)-

- (a) premises occupied by a Government department for official purposes ("Government building");
- (b) a structure, place or premises hired under subsection (3) or which is to be so hired;
- (c) any school in respect of which a grant is made out of the general revenue;
- (d) a building occupied by an organization, association or body in respect of which a grant is made out of the general revenue; or
- (e) any other structure, premises, whether permanent or temporary, mobile or otherwise, or place, which the Chief Electoral Officer considers suitable for a purpose specified in subsection (1).

(3) The Chief Electoral Officer may hire any structure, place or premises or a part of a structure, place or premises to designate as a polling station or a counting station.

(4) The Chief Electoral Officer may designate a place described in subsection (2) in addition to or in substitution of a place designated under this section as a polling station or a counting station. The Chief Electoral Officer must publish notice of such designation. The notice may be published in a manner that Officer thinks fit.

(5) The Chief Electoral Officer must ensure that there are sufficient polling stations and counting stations to enable polling and counting of the votes to take place smoothly and efficiently.

(6) The Chief Electoral Officer must make available, at that Officer's office, for public inspection, a list of the polling stations and counting stations.

(7) The Chief Electoral Officer must, 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 their having been used as a polling station or a counting station.

(8) The Chief Electoral Officer may take such steps as that Officer considers appropriate, including taking out insurance, to insure against any risk of loss or damage that may arise due to or in connection with the use of any structure, place or premises as a polling station or a counting station.

(9) The Chief Electoral Officer may-

- (a) in relation to a general election, designate-
 - (i) one or more counting stations for counting the votes for each

- geographical constituency cast at all the polling stations used for polling for the general election; and
- (ii) one counting station for counting the votes for functional constituencies cast at all the polling stations used for polling for the general election;
- (b) in relation to a by-election for a constituency, designate one or more counting stations for counting the votes cast at all the polling stations used for polling for the by-election. (L.N. 65 of 2000)

Section:	39	Presiding Officer to exhibit at polling station notice providing information for the guidance of electors	L.N. 20 of 1998	21/01/1998
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(1) The Presiding Officer must ensure that a notice providing information for the guidance of electors and authorized representatives in voting procedure is exhibited outside the polling station and inside every voting compartment of the polling station.

(1A) The Presiding Officer of a small polling station must ensure that, before the commencement of the poll, a notice providing information of the main counting station designated for counting the votes of the small polling station is exhibited outside the small polling station.

(2) A notice under subsection (1) must be in the specified form.

Section:	41	Presiding Officer to keep order in no canvassing zone and no staying zone	L.N. 65 of 2000	05/05/2000
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- (1) The Presiding Officer must use that Officer's best endeavours to ensure that a person does not, on polling day, ~~perform any act as described in section 40(16)~~.
- ~~(a) engage in the canvassing for votes in the no canvassing zone (except as provided in section 40(17));~~
- ~~(aa) conduct any activity for canvassing for votes, so that the sound of the activity can be heard in the no canvassing zone;~~
- ~~(b) use a sound amplifying system or device in the no canvassing zone;~~
- ~~(c) use a sound amplifying system or device, for canvassing for votes, so that the sound emitted by it can be heard in the no canvassing zone;~~
- ~~(ca) (except as provided in section 40(18)) 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) a body any member of which is standing as a candidate in the election; or~~
- ~~(B) a prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election; or~~
- ~~(d) stay or loiter in the no staying zone (except where the person has been expressly permitted to do so by the Presiding Officer).~~

- (2) If, on polling day, in a no canvassing zone or a no staying zone, a person-
- (a) misconducts himself or herself, the Returning Officer or the Presiding Officer may;
- (b) fails to obey a lawful order of the Returning Officer, that Officer may; or
- (c) fails to obey a lawful order of the Presiding Officer, that Officer may,

order the person to leave the no canvassing zone or the no staying zone, as the case may be, immediately.

(3) If a person fails to leave when ordered to do so under subsection (2), the person may be removed by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate.

(4) A person who is removed under subsection (3) may not enter the relevant zone again on that day, unless the Returning Officer or the Presiding Officer, as may be appropriate, permits him or her to do so.

(5) The powers conferred by this section are not to be exercised so as to prevent a person from voting at the polling station allocated to that person.

Section:	45	What constitutes an offence at a polling station	L.N. 65 of 2000	05/05/2000
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- (1) Subject to subsection (6), if on polling day, within a polling station, a person-
- (a) communicates with an elector or an authorized representative; or
 - (b) uses a mobile telephone, paging machine or any other device for electronic communication,
- contrary to a direction of the Returning Officer, Assistant Returning Officer, Presiding Officer; ~~Deputy Presiding Officer or Assistant Presiding Officer or any polling officer~~ not to do so, that person commits an offence. (L.N. 147 of 1998)
- (2) A person who, on polling day, films or takes photographs or makes any audio or video recording within a polling station without-
- (a) the express permission of-
 - (i) the Presiding Officer; or
 - (ii) any member of the Commission; or
 - (b) the express permission, in writing, of the Returning Officer for the constituency or constituencies for which the polling station is used for polling,
- commits an offence (L/N. 65 of 2000)
- (3) A person who, on polling day, engages in the canvassing for votes or displays an election advertisement within a polling station commits an offence. (L.N. 65 of 2000)
- (4) A person who, on polling day, fails to comply with a lawful order given by the Returning Officer or the Presiding Officer or behaves in a disorderly manner in a no canvassing zone or a no staying zone or within or at a polling station or contravenes section 40(16) or 41(4), commits an offence.
- (5) A person who, without reasonable excuse, displays or wears, on polling day and within a polling station, 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 prescribed body the registered name or registered emblem of which has been printed on any ballot paper for the election,
- commits an offence. (L.N. 65 of 2000)
- (6) Subsection (1) does not apply to-
- (a) a Returning Officer or an Assistant Returning Officer;
 - (b) a member of the Commission;
 - (c) the Chief Electoral Officer; (L.N. 147 of 1998)
 - (d) a person authorized in writing by a member of the Commission to so communicate;
 - (e) a Presiding Officer;
 - (f) a polling officer;
 - (g) a person authorized in writing by the Returning Officer to act as a liaison officer;
 - (h) a police officer on duty at a polling station; or
 - (i) a member of the Civil Aid Service on duty at the polling station. (L.N. 147 of 1998)
- (7) A person who commits an offence- ~~under this section is liable to a fine at level 2 and to imprisonment for 3 months.~~
- (a) under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months;
 - (b) under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months.

Section:	53A	Elector who has not cast vote may return to cast vote with permission		
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- (1) Subject to subsection (5), if an elector -
- (a) has been issued with a ballot paper; and
 - (b) has left the polling station without casting the vote,
- the elector must not cast the vote when the elector returns to the polling station before the close of the poll unless -
- (c) before leaving the polling station, the elector 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 the 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 that Officer 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), that Officer must -
- (a) keep in 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), that Officer 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) has become 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 the 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 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) is to be regarded as issuing a ballot paper under section 53(1) or (2).

(8) In this section, references to “elector” are to be construed as including an authorized representative.

Section:	63A	Steps to be taken at the close of the poll: a small polling station		
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(1) As soon as practicable after the close of the poll at a small polling station, the Presiding Officer of that polling station 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.

(2) A candidate and an election agent and a polling agent of such candidate may stay in a polling station referred to in subsection (1) while it is closed for taking the steps referred to in subsection (1)(a), (b), (c), (d) and (e).

(3) The Presiding Officer of the small polling station must then deliver the ballot box or boxes ~~and the sealed packets to the Presiding Officer of the main counting station, the sealed packets and the ballot paper account prepared by that Officer to the Presiding Officer of the main counting station.~~

Section:	69	Returning Officers or Presiding Officers to keep order at the counting station	L.N. 65 of 2000	05/05/2000
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(1) The Chief Returning Officer, and the Returning Officers in charge of a counting zone of the central counting station must keep order at the central counting station. (L.N. 65 of 2000)

(1A) The Presiding Officer who supervises a counting station must keep order at that counting station. (L.N. 65 of 2000)

(2) If, at or in the vicinity of the central counting station, a person –

(a) misconducts himself or herself; or

(b) fails to obey a lawful order of –

(i) the Chief Returning Officer who supervises the counting station; or

(ii) the Returning Officer in charge of a counting zone of the counting station.

the Chief Returning Officer or the Returning Officer, as may be appropriate, may order the person to leave the counting station or the vicinity of the counting station, as the case may be, immediately.

~~station,~~

~~that Officer may,~~

~~order the person to leave the counting station or the vicinity of the counting station, as the case may be, immediately.~~

(2A) If, at or in the vicinity of a counting station other than the central counting station, a person –

(a) misconducts himself or herself, or

(b) fails to obey a lawful order of the Presiding Officer who supervises the counting station,

the Presiding Officer may order the person to leave the counting station or the vicinity of the counting station, as the case may be, immediately.

(3) If a person fails to leave when ordered to do so under subsection (2) or (2A), the person may be removed by a police officer or by a person authorized in writing by the Chief Returning Officer, the Returning Officer or the Presiding Officer, as may be appropriate.

(4) A person who is removed under subsection (3) may not enter the relevant counting station again on that day, unless the Officer who ordered his or her removal permits him or her to do so.

(5) (Repealed L.N. 65 of 2000)

Section:	70	Ballot boxes for FC ballot papers to be delivered to the counting station	L.N. 65 of 2000	05/05/2000
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(1) In a general election in relation to which the Chief Electoral Officer has exercised the power under section 28(9)(a)-

- (a) ~~the Presiding Officer of a GC polling station which is also designated as a counting station (other than a main counting station) must deliver or arrange to be delivered to the central counting station the ballot boxes for the FC ballot papers from that Officer's polling station, together with the sealed packets under section 63 and the ballot paper accounts prepared by that Officer for the functional constituencies; and~~
- (b) ~~the Presiding Officer of a GC polling station which is also designated as a main counting station must, in addition to the ballot boxes, sealed packets and ballot paper accounts referred to in paragraph (a), deliver or arrange to be delivered to the central counting station the relevant ballot box or boxes, sealed packets and ballot paper accounts delivered to that Officer under section 63A(3) for the functional constituencies.~~

~~-, a Presiding Officer of a GC polling station must deliver or arrange to be delivered to the central counting station the ballot boxes from that Officer's polling station and the ballot boxes given into that Officer's charge under section 63A(3), for the FC ballot papers, together with the sealed packets under section 63 and the ballot paper account prepared by that Officer for the functional constituencies.-~~

(2) In a by-election for a functional constituency, the Presiding Officer must deliver or arrange to be delivered to the counting station for counting the votes cast at the by-election, the ballot boxes from that Officer's polling station, together with the sealed packets under section 63 and the ballot paper account prepared by that Officer.

(L.N. 65 of 2000)

Section:	74	Arrangements for separating ballot papers and verifying ballot paper account at central counting station	L.N. 65 of 2000	05/05/2000
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(1) At the central counting station, the Returning Officer for a functional constituency must, in relation to the FC ballot papers in the ballot boxes given into that Officer's charge under section 72, in the counting zone for that functional constituency-

- (a) sort the FC ballot papers according to each functional constituency;
- (b) count and record the number of FC ballot papers for each functional constituency;
- (c) verify the ballot paper account for each functional constituency by comparing it with the number of ballot papers recorded for that functional constituency under paragraph (b);
- (d) prepare a statement in writing as to the result of the verification;
- (e) retain the FC ballot papers for the functional constituency for which that Officer is appointed together with the verification of the ballot paper account;
- (f) make into separate bundles the other sorted FC ballot papers together with the relevant verification of the ballot paper account, place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone; and
- (g) in case there are any GC ballot papers in the ballot boxes-
 - (i) sort the GC ballot papers according to each geographical constituency;
 - (ii) count and record the number of GC ballot papers for each geographical constituency;
 - (iii) prepare a statement in writing as to the number of GC ballot papers recorded for each geographical constituency under subparagraph (ii);
 - (iv) make into separate bundles the sorted GC ballot papers together with the relevant statement prepared under subparagraph (iii), place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone. (L.N. 65 of 2000)

(3)-(4) (Repealed L.N. 65 of 2000)

(5) If a Returning Officer considers it necessary or if required by a candidate who is present at the counting zone or an election agent or counting agent so present, that Officer must, in preparing the verification of the ballot paper account, compare the ballot paper account with the ballot papers recorded by that Officer and the spoiled ballot papers, the unused ballot papers and the counterfoils or un-issued ballot papers.

(6)-(7) (Repealed L.N. 65 of 2000)

(8) A Returning Officer must give the receptacles referred to in subsection (1)(f) or (g)(iv) into the charge of an Assistant Returning Officer in attendance at the relevant counting zone. The Assistant Returning Officer-

- (a) must hand over the receptacle containing the bundle of special functional constituency ballot papers to the ~~Chief Returning Officer or to the~~ Returning Officer for the relevant special functional constituency;
- (b) must hand over the receptacle containing the bundle of other FC ballot papers to the Returning Officer for the relevant functional constituency; and
- (c) must hand over the receptacle containing the bundle of GC ballot papers to the Returning Officer for the relevant geographical constituency.

(10) A candidate or an election agent or a counting agent may copy what is recorded on the ballot paper account or the verification of the ballot paper account.

(L.N. 147 of 1998)

Section:	79A	Result of the counting of votes and re-count for geographical constituencies		
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(1) After the votes are counted under section 75, the Presiding Officer must make known to the candidates who are present within the counting zone the result of the counting of the votes. If the candidates are not present, that Officer is to make known the result to their respective election agents or counting agents, if those agents are present at the counting zone.

(2) A candidate who is present 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 or re-counted (as the case may be) votes. That Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

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

(4) 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 relevant Assistant Returning Officer for the geographical constituency the result of the counting of votes and re-count (if any).

(5) After the Assistant Returning Officer has been notified of the results of the counting of votes of all the counting stations in his charge for the geographical constituency under subsection (4), that Officer must make known the results to the Returning Officer for the geographical constituency.

~~(6) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency, that Officer must add up such results together with the result of the counting of votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c), if any, and make known the final results to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency, that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.~~

~~(7) If the Returning Officer decides to comply with the request referred to in subsection (6), that Officer must conduct a re-count of the votes recorded on the ballot papers handed over to that Officer under section 74(8)(c) and inform all the Assistant Returning Officers to instruct the Presiding Officers under their respective charge to conduct a re-count at their respective counting station forthwith.~~

~~(8) The Presiding Officer of each of the counting stations for the geographical 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 relevant Assistant Returning Officer.~~

~~(9) After the Assistant Returning Officer has been notified of the results of the re-count of all the counting stations in his charge for the geographical constituency, that Officer must make known the results to the Returning Officer for the geographical constituency.~~

~~(10) After the Returning Officer has been notified of the results of the re-count of all the counting stations for the geographical constituency, that Officer must add up such results together with the result of the counting of votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c), if any, and make known the final results to the candidates or their election agents or counting agents at the place specified by the Returning Officer.~~

(6) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must make known the results to the candidates or their election agents or counting agents at

the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency, that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(6A) After the Returning Officer has been notified of the results of the counting of votes of all the counting stations for the geographical constituency under subsection (5), that Officer must also make known the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency, if any, to the candidate or their election agents or counting agents at the place specified by the Returning Officer. A candidate or the election agent of the candidate who is present at the specified place may make a request to the Returning Officer for a re-count of the votes of all the counting stations for the geographical constituency and the votes recorded on the GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency.

(7) If the Returning Officer decides to comply with the request referred to in subsection (6), that Officer must require all the Assistant Returning Officers to instruct the Presiding Officers of the polling stations in their respective charge to conduct a re-count at the relevant counting stations forthwith.

(8) The Presiding Officer of each of the counting stations for the geographical constituency must make known the result of the re-count at the counting station to the candidates or their election agents or counting agents who are present at the counting station and must report that result to the relevant Assistant Returning Officer.

(9) After the Assistant Returning Officer has been notified of the results of the re-count of all the counting stations in his charge for the geographical constituency under subsection (8), that Officer must make known the results to the Returning Officer for the geographical constituency.

(10) After the Returning Officer has been notified of the results of the re-count of all the counting stations for the geographical constituency under subsection (9), that Officer must add together-

- (a) such results; and
- (b) the result of the counting of the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency, if any.

and make known the aggregate result to the candidates or their election agents or counting agents at the place specified by the Returning Officer. If a candidate or the election agent of the candidate who is present at the specified place makes a request to the Returning Officer for a re-count of the votes referred to in paragraph (b), that Officer must comply with the request unless the Officer is of the opinion that the request is unreasonable.

(11) Subject to subsection (12), if the Returning Officer decides to comply with a request referred to in subsection (6A), that Officer must conduct a re-count of -

- (a) the votes of all the counting stations in accordance with the steps as described in subsections (7), (8) and (9); and
- (b) the votes recorded on the GC ballot papers handed over to that Officer under section 74(8)(c) for the geographical constituency.

and make known the final result to the candidates or their election agents or counting agents at the place specified by that Officer.

(12) The Returning Officer must not conduct a re-count under subsection (6A)-

- (a) unless the request for such re-count is made immediately after that Officer

makes known, under that subsection, the estimated number of GC ballot papers to be handed over to him under section 74(8)(c) for the geographical constituency; or

- (b) if the estimated number of GC ballot papers to be handed over to that Officer under section 74(8)(c) for the geographical constituency is less than the difference between the numbers of remaining votes cast for any 2 lists of candidates for the geographical constituency, as determined in accordance with the counting system under section 49 of the Legislative Council Ordinance (Cap. 542).

Section:	96	Enforcement of provisions as to secrecy	L.N. 65 of 2000	05/05/2000
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(1) A person who divulges to any other person, by communicating information as to the name or identity document number in a register of electors, or otherwise, whether a person has or has not applied for a ballot paper or voted, commits an offence.

(2) Subsection (1) does not apply to anything done for a purpose authorized by law or when required to do so by a police officer or an officer of the Independent Commission Against Corruption investigating an offence under the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), sections 3, 4 and 8 of the Prevention of Bribery Ordinance (Cap 201), section 13B of the Independent Commission Against Corruption Ordinance (Cap 204) or the Electoral Affairs Commission Ordinance (Cap 541) or any regulation made under that Ordinance. (10 of 2000 s. 47)

(3) A person who communicates to any person any information obtained at a counting of the votes as to the candidate for whom a vote has been given on any particular ballot paper, commits an offence.

(4) A person who interferes with an elector when that elector is recording the vote, commits an offence.

(5) A person who interferes with or attempts to interfere with any ballot boxes, un-issued ballot papers, unused ballot papers, spoiled ballot papers, tendered ballot papers, marked ballot papers or a copy of the final register marked under section 53(7), commits an offence. (L.N. 65 of 2000)

(6) A person who interferes with or attempts to interfere with any opened ballot boxes, ballot paper accounts, verifications or re-verifications of such accounts or any other relevant election materials referred to in this Regulation commits an offence.

(7) A person who obtains or attempts to obtain in any manner-

- (a) within a polling station or a no staying zone; or
- (b) within a no canvassing zone, without the express permission of the Presiding Officer or the Commission,

information as to the candidate for whom an elector in that station is about to vote or has voted, commits an offence.

(8) A person who communicates at any time to any person any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted, commits an offence.

(9) A person who directly or indirectly induces an elector to display the elector's ballot paper after the elector has marked it, so as to make known to any person a candidate for or against whom the elector has voted, commits an offence.

(10) A person who commits an offence under this section is liable to a fine at level 2 and to imprisonment for 36 months.

(11) In this section, references to-

- (a) "candidate" are to be construed as including a list of candidates; and
- (b) "elector" are to be construed as including an authorized representative.

Schedule:	2	POSTPONEMENT AND ADJOURNMENT OF GENERAL ELECTION AND BY-ELECTION	L.N. 210 of 2001	12/10/2001
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5. Procedure after adjournment of poll

(1) If a poll is adjourned under this Schedule or section 44 of the Legislative Council Ordinance (Cap 542) ~~or section 18 of Schedule 2 to that Ordinance~~, the procedure specified in this section is to be complied with. (L.N. 147 of 1998)

(2) The Presiding Officer must, in the presence of any persons present within the polling station, secure the ballot boxes and their contents in a manner that Officer thinks fit. Then, without counting or separating the ballot papers or counting the votes, that Officer must deliver the secured ballot boxes together with any un-issued ballot papers, unused ballot papers or spoiled ballot papers, and the marked copies of the final register to the Returning Officer.

(3) If it is not practicable to make delivery to the Returning Officer, the Presiding Officer must deposit the secured ballot boxes, and the other materials referred to in subsection (2), in a safe place within the polling station. If there is no safe place within the polling station, that Officer must deposit them in a safe place within a police station or a public building close to the polling station. If there is no such police station or public building, that Officer must deposit them in a secure building (which may even be a residential building) close to the polling station. If there is no police station, public building or secure building close to the polling station, that Officer must deposit the ballot boxes and materials in a safe place within any other police station or public building or, in the absence of such a station or building, in a safe place in any other building (which may even be a residential building).

(4) If the ballot boxes and other materials are delivered to the Returning Officer, that Officer must take such steps as determined by the Commission (generally or in a particular case) for the purpose of ensuring their safety and security. The Returning Officer must remain in charge of them and be responsible for their safety and security until polling in respect of the adjourned poll commences.

(5) If a poll is adjourned under this Schedule or section 44 of the Legislative Council Ordinance (Cap 542) ~~or section 18 of Schedule 2 to that Ordinance~~, the polling hours appointed for the resumed poll must be such that the total time allowed for polling (that is the aggregate of the polling hours which had been spent at the time the poll was adjourned and the polling hours appointed for the resumed poll) is not less than the total time that would have been allowed for polling had the poll not been adjourned. (L.N. 147 of 1998)

6. Procedure after adjournment or postponement of a count

(1) If a count is adjourned under this Schedule or section 44 of the Legislative Council Ordinance (Cap 542) ~~or section 18 of Schedule 2 to that Ordinance~~, or if the count is adjourned due to the postponement of a poll under this Schedule, the Returning Officer or the Presiding Officer, as may be appropriate, must comply with this section. (L.N. 147 of 1998)

(2) The Returning Officer or the Presiding Officer, as may be appropriate, must take steps to cease the count. Then, in the presence of the persons, if any, present within the counting station, deposit the ballot boxes (whether opened or un-opened) and receptacles, if any, together with the ballot papers (whether counted or not), any un-issued ballot papers, tendered ballot papers, ballot paper account, verification of a ballot paper account or re-verification of a ballot paper account, and any other relevant election materials, in a safe place within the counting station. If there is no safe place within the counting station, that Officer must deposit them in a safe place within a police station or a public building close to the counting station. If there is no such police station or public building, that Officer must deposit

them in a secure building (which may even be a residential building) close to the counting station. If there is no police station, public building or secure building close to the counting station, that Officer must deposit the election materials in a safe place within any other police station or public building or in the absence of such a station or building, in a safe place in any other building (which may even be a residential building).

(3) The election materials must remain in the charge of the Returning Officer or the Presiding Officer, as may be appropriate. That Officer is to be responsible for their safety and security until the adjourned or postponed count is resumed under section 65(7) of this Regulation.

(4) In this section "Returning Officer" (選舉主任) means a Returning Officer specified by the Chief Electoral Officer for the purposes of this section.