

L.N. 114 of 2006

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2006**

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**ELECTORAL AFFAIRS COMMISSION (ELECTORAL
PROCEDURE) (ELECTION COMMITTEE)
(AMENDMENT) REGULATION 2006**

(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 14 July 2006.

2. Interpretation

Section 1(1) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) is amended by adding—

““head-dress” (頭飾) means anything which is worn on a person’s head;”.

**3. Returning Officer to decide whether candidates
are validly nominated**

(1) Section 13(2) is amended by repealing “17 and 18” and substituting “17, 18 and 18A”.

(2) Section 13(3) is amended by repealing “17 and 18” and substituting “17, 18 and 18A”.

**4. Chief Electoral Officer to designate some
polling stations as special polling stations**

Section 29 is amended by adding—

“(2A) The Chief Electoral Officer may, for the purpose of subsection (1), designate as a special polling station any place which has been designated as a polling station under section 28.”.

**5. Chief Electoral Officer to appoint Presiding
Officers for each polling station**

(1) Section 34 is amended, in the heading, by repealing “**appoint Presiding Officers**” and substituting “**appoint or remove Presiding Officers, etc.**”.

- (2) Section 34 is amended by adding—
“(3) The Chief Electoral Officer may at any time revoke the appointment of any Presiding Officer or polling officer.”.

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

(1) Section 40(5) is amended by repealing “5 days” and substituting “7 days”.

(2) Section 40 is amended by adding—

“(8A) A Returning Officer may perform any act which that Officer is required or authorized to perform under subsections (7) and (8) through a Presiding Officer.”.

(3) Section 40(14)(a) is amended by repealing “(15)(a)” and substituting “(15)”.

(4) Section 40(14) is amended by adding—

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

(5) Section 40(14)(d) is amended by repealing “(15)(b)” and substituting “(16)”.

(6) Section 40(14)(d) is amended by adding “or wear” after “display”.

(7) Section 40(14)(d) is amended by repealing “or clothing” and substituting “, clothing or head-dress”.

(8) Section 40(15) is repealed and the following substituted—

“(15) On polling day, a person may, without obstructing any person, canvass for votes from door to door 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 for votes; and

(b) has no polling station inside it.”.

(9) Section 40 is amended by adding—

“(16) A person may, for the purpose of canvassing for votes pursuant to subsection (15), display or wear any badge, emblem, clothing or head-dress referred to in subsection (14)(d).”.

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

(1) Section 41(1)(a) is amended by repealing “40(15)(a)” and substituting “40(15)”.

(2) Section 41(1) is amended by adding—

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

(3) Section 41(1)(d) is amended by repealing “40(15)(b)” and substituting “40(16)”.

(4) Section 41(1)(d) is amended by adding “or wear” after “display”.

(5) Section 41(1)(d) is amended by repealing “or clothing” and substituting “, clothing or head-dress”.

(6) Section 41(4) is amended by repealing “area” and substituting “zone”.

8. Who may enter or be present at polling station

Section 44(4) is amended—

(a) in paragraph (g), by repealing “or”;

(b) in paragraph (h), by repealing the full stop and substituting a semicolon;

(c) by adding—

“(i) police officers and members of the Civil Aid Service on duty at the polling station; or

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

9. What constitutes offence at polling station

(1) Section 45(1) is amended by repealing “Presiding Officer” and substituting “Returning Officer, Assistant Returning Officer, Presiding Officer or any polling officer”.

(2) Section 45(5) is amended by adding “or wears” after “displays”.

(3) Section 45(5) is amended by repealing “or clothing” and substituting “, clothing or head-dress”.

(4) Section 45(6) is amended by adding—

“(aa) an Assistant Returning Officer;”.

(5) Section 45(7) is repealed and the following substituted—

“(7) A person who commits an offence under subsection (1), (3), (4) or (5) is liable to a fine at level 2 and to imprisonment for 3 months.”.

(6) Section 45 is amended by adding—

“(8) A person who commits an offence under subsection (2) is liable to a fine at level 2 and to imprisonment for 6 months.”.

10. Procedure for voting

(1) Section 54(1) is amended by repealing everything after “as appropriate.”.

(2) Section 54 is amended by adding—

“(1A) After marking a ballot paper, a voter or authorized representative must put the ballot paper into the ballot box in accordance with any direction given under subsection (1B).

(1B) The Commission may direct, in such manner as it thinks fit, a voter or authorized representative—

(a) to put the ballot paper, unfolded, into the ballot box with the marked side facing down;

(b) to—

(i) fold the ballot paper so that the marked side is inside; and

(ii) put the folded ballot paper into the ballot box;

(c) to—

(i) put the ballot paper, unfolded, into an envelope provided at the polling station; and

(ii) put the ballot paper contained in the envelope into the ballot box; or

(d) to—

(i) fold the ballot paper so that the marked side is inside;

(ii) put the folded ballot paper into an envelope provided at the polling station; and

(iii) put the ballot paper contained in the envelope into the ballot box.”.

11. Section substituted

Section 58 is repealed and the following substituted—

“58. When person is to be issued with ballot paper marked “重複” and “TENDERED”

(1) Subject to subsection (2) and section 55, if a person (“the first-mentioned person”) representing himself or herself to be a particular voter or authorized representative registered in the subsector final register applies for a ballot paper after a person has been issued with a ballot paper earlier on the basis that he or she is that first-mentioned person, the Presiding Officer must issue to the first-mentioned person a ballot paper endorsed on the front of it with the words “重複” and “TENDERED”.

- (2) The Presiding Officer may issue a ballot paper under subsection (1) only if—
- (a) the Presiding Officer is not certain that the first-mentioned person is the person who has been issued with a ballot paper earlier; and
 - (b) the first-mentioned person answers the appropriate questions set out in section 51 to the satisfaction of the Presiding Officer.”.

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

Section 63(4) is amended by repealing everything after “at least” and substituting “1 working day before polling day.”.

13. Candidates may appoint counting agents

Section 64(5)(a) is amended by repealing “to reach that Officer at least 3 working days” and substituting “at least 1 week”.

14. Chief Electoral Officer to appoint counting officers

(1) Section 65 is amended, in the heading, by adding “or remove” after “appoint”.

(2) Section 65 is amended by adding—

“(4) The Chief Electoral Officer may at any time revoke the appointment of a counting officer.”.

15. Section added

The following is added—

“74A. Invalid and questionable ballot papers

In the course of counting in accordance with section 73(2) or (3), or 74(2) or (3)—

(a) any ballot paper which—

- (i) appears to have any writing or mark by which the voter can possibly be identified;
- (ii) appears to be not marked in accordance with section 56;
- (iii) appears to be substantially mutilated; or

- (iv) appears to be void for uncertainty, is questionable and must be separated and forwarded to the Returning Officer to decide whether the vote is to be counted under section 78; and
- (b) any ballot paper described in section 77(1)(b), (c), (d) and (f) must be separated and the vote is not to be counted under section 77.”.

16. Ballot papers the votes recorded on which are not to be counted

(1) Section 77 is amended, in the Chinese text, in the heading, by repealing “不得點算” and substituting “不予點算”.

(2) Section 77(1) is amended by repealing “The votes recorded on the following” and substituting “Upon counting of votes, the following ballot papers are not to be regarded as valid and the votes recorded on the”.

(3) Section 77(1)(a) is amended by adding “possibly” after “can”.

(4) Section 77 is amended by adding—

- “(4) A candidate, an election agent or a counting agent—
 - (a) may inspect a ballot paper referred to in subsection (1)(b), (c), (d) or (f); but
 - (b) is not entitled to make representations to the Returning Officer concerning the ballot paper.”.

17. Returning Officer to make decisions on questionable ballot papers

(1) Section 78(1) and (2) is repealed.

(2) Section 78(3) is repealed and the following substituted—

“(3) If a ballot paper is forwarded to the Returning Officer under section 74A(a), a candidate, an election agent or a counting agent, if present at the counting of votes, may—

- (a) inspect the ballot paper; and
- (b) make representations to the Returning Officer concerning the ballot paper.”.

(3) Section 78(5) is amended by repealing ““不予接納”” and substituting ““不獲接納””.

(4) Section 78(5) is amended by repealing “or an election agent” and substituting “, an election agent or a counting agent”.

(5) Section 78(5) is amended by repealing “不予接納的決定遭反對” and substituting “反對此選票不獲接納”.

(6) Section 78(6) is amended by repealing “or an election agent” and substituting “, an election agent or a counting agent”.

(7) Section 78(6) is amended by repealing “予以接納的決定遭反對” and substituting “反對此選票獲接納”.

(8) Section 78(7)(a) is amended by adding “possibly” after “can”.

18. Returning Officer to seal ballot papers in packets

(1) Section 82(1)(e) is amended, in the Chinese text, by repealing “不予接納” and substituting “不獲接納”.

(2) Section 82(2)(e) is amended, in the Chinese text, by repealing “不予接納” and substituting “不獲接納”.

19. Electoral officers, candidates and agents to make declaration of secrecy

Section 92(2) is amended by adding “election agent,” after “candidate,”.

20. Enforcement of provisions as to secrecy

Section 93(10) is amended by repealing “3 months” and substituting “6 months”.

21. Publication and display of notices, etc.

Section 95(1) is amended by adding “or the Presiding Officer” after “Returning Officer”.

22. Election advertisements

(1) Section 100(14) is amended by adding “or any person authorized by that Officer” after “Returning Officer”.

(2) Section 100(14) is amended by adding “or obliterate,” after “destroy,”.

(3) Section 100(14) is amended by adding “or the person” after “that Officer”.

(4) Section 100(15)(d) is amended by repealing “T-shirt, cap, badge or carrier bag” and substituting “badge, carrier bag, clothing or head-dress”.

Made this 15th day of May 2006.

WOO Kwok-hing, VP
Chairman,
Electoral Affairs Commission

Lawrence LOK Ying-kam
Member,
Electoral Affairs Commission

Andrew CHAN Chi-fai
Member,
Electoral Affairs Commission

Explanatory Note

This Regulation amends the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) (“the principal Regulation”). Its objectives are as follows.

Section 1

2. The commencement of this Regulation is provided for.

Section 2

3. The definition of “head-dress” is added to section 1 of the principal Regulation mainly for prohibiting, by virtue of the newly amended sections 40(14)(d) and 45(5) of the principal Regulation, display in the no canvassing zone and a polling station of head-dress for election purposes on polling day of an Election Committee subsector election.

Section 3

4. Section 13(2) and (3) of the principal Regulation, which provides for nomination of a candidate for the Election Committee subsector election, is amended to tie in with the amendment lately introduced by the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) (“the Amendment Ordinance”). By virtue of the Amendment Ordinance, new section 18A is added to the Schedule to the Chief Executive Election Ordinance (Cap. 569) to provide for disqualification of candidates for the subsectors of the Chinese People’s Political Consultative Conference, Heung Yee Kuk and the District Councils.

Section 4

5. Section 29 of the principal Regulation is amended to provide that the Chief Electoral Officer may designate the same place as a special polling station for use by persons with a disability and a polling station for use by other voters.

Section 5

6. Section 34 of the principal Regulation is amended to provide that the Chief Electoral Officer may at any time remove any Presiding Officer or polling officer.

Section 6

7. Section 40 of the principal Regulation is amended to—

- (a) require the Returning Officer to give notice to the candidates of the determination of a no canvassing zone and a no staying zone at least 7 days (instead of 5 days as it is now required) before polling day;
- (b) provide that the Returning Officer may perform certain functions through the Presiding Officer;
- (c) prohibit any person from conducting any activity on polling day for canvassing for votes so that the sound of the activity can be heard in the no canvassing zone; and
- (d) expressly spell out that activity for canvassing for votes may be conducted by a person on polling day in a building within the no canvassing zone but with no polling station inside it only if he is allowed to enter the building.

Section 7

8. Section 41 of the principal Regulation is amended to provide that the Presiding Officer must use his best endeavours to ensure that a person does not, on polling day, conduct any activity for canvassing for votes so that the sound of the activity can be heard in the no canvassing zone.

Section 8

9. Section 44 of the principal Regulation is amended to provide that police officers, members of the Civil Aid Service and the persons authorized in writing by the Returning Officer to act as liaison officers be included in the category of persons who may not be excluded from the polling station by the Presiding Officer.

Section 9

10. Section 45 of the principal Regulation is amended to—

- (a) provide that, in addition to the Presiding Officer, the Returning Officer, Assistant Returning Officer and any polling officer may also direct a person not to communicate with a voter or an authorized representative, or not to use any device for electronic communication, on polling day within a polling station; and
- (b) increase the penalty for imprisonment for a person who, on polling day, films or takes photographs or makes any audio or video recording within a polling station without the requisite permission from 3 to 6 months.

Section 10

11. Section 54 of the principal Regulation is amended to provide that the Electoral Affairs Commission may direct as to the manner in which a voter or authorized representative must put the ballot paper into the ballot box.

Section 11

12. Section 58 of the principal Regulation is amended to provide clearly that if a person (“the first-mentioned person”) representing himself to be a particular voter or authorized representative registered in the subsector final register applies for a ballot paper after a person has been issued with a ballot paper earlier on the basis that he is that first-mentioned person, the Presiding Officer may issue a ballot paper marked “TENDERED” to the first-mentioned person only if—

- (a) the Presiding Officer is not certain that the first-mentioned person is the person who has been issued with a ballot paper earlier; and
- (b) the first-mentioned person answers the appropriate questions to the satisfaction of the Presiding Officer.

Section 12

13. Section 63 of the principal Regulation is amended to require the Returning Officer to give notice to the candidates of the time and place determined for the counting of votes at least 1 working day before polling day (instead of 24 hours in advance of the determined time as it is now required).

Section 13

14. Section 64 of the principal Regulation is amended to require a candidate to give notice of appointment of counting agent to the Returning Officer at least 1 week (instead of reaching the Returning Officer at least 3 working days as it is now required) before polling day.

Section 14

15. Section 65 of the principal Regulation is amended to provide that the Chief Electoral Officer may at any time remove any counting officer.

Section 15

16. A new section 74A is added to the principal Regulation to provide in the course of counting—

- (a) which ballot papers cast in an election are questionable and must be separated and forwarded to the Returning Officer to decide whether the votes are to be counted under section 78 of the principal Regulation; and
- (b) which ballot papers cast in an election must be separated and the votes are not to be counted under section 77 of the principal Regulation.

Section 16

17. Section 77 of the principal Regulation is amended to specify a candidate, an election agent or a counting agent may inspect certain kinds of ballot papers cast in an election but is not entitled to make representations as to the same.

Section 17

18. Section 78 of the principal Regulation is amended to tie in with the amendment to section 77 of, and the addition of section 74A to, the principal Regulation. It also provides that, in addition to a candidate and an election agent, a counting agent may also inspect questionable ballot papers and make representations to that Officer, or raise objections to that Officer's decision to accept or reject a questionable ballot paper.

Section 18

19. The Chinese text of section 82(1)(e) and (2)(e) of the principal Regulation is amended consequential upon the amendments made to section 78(5) of the principal Regulation.

Section 19

20. Section 92 of the principal Regulation is amended to require an election agent to make a declaration of secrecy.

Section 20

21. Section 93 of the principal Regulation is amended to increase the penalty for imprisonment for violation of secrecy as to voting from 3 to 6 months.

Section 21

22. Section 95 of the principal Regulation is amended to provide that, in addition to the Returning Officer, the Presiding Officer may also publish or display a notice, determination, or other writing under the principal Regulation.

Section 22

23. Section 100 of the principal Regulation is amended to provide that, in addition to the Returning Officer, other persons authorized by the Returning Officer may also seize and dispose of, or destroy, or obliterate, or cover any election advertisements not complying with the legal requirements.