

**File Ref.: REO 14/32/5(CR)**

**LEGISLATIVE COUNCIL BRIEF**

Electoral Affairs Commission Ordinance (Cap. 541)

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(LEGISLATIVE COUNCIL)(AMENDMENT)  
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(DISTRICT COUNCILS)(AMENDMENT)  
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(ELECTION COMMITTEE)(AMENDMENT)  
REGULATION 2009**

**ELECTORAL PROCEDURE (CHIEF EXECUTIVE  
ELECTION)(AMENDMENT) REGULATION 2009**

**ELECTORAL PROCEDURE (VILLAGE REPRESENTATIVE  
ELECTION)(AMENDMENT) REGULATION 2009**

**INTRODUCTION**

On 16 June 2009, the Electoral Affairs Commission (“EAC”) made five Amendment Regulations on electoral procedure at **Annexes A to E** which aim to facilitate prisoners and persons remanded, detained or arrested who are registered electors (“electors in custody”) to cast their votes in public elections. This brief informs Members of the main provisions of the Amendment Regulations.

## **BACKGROUND**

2. In August 2008, the Court granted leave to three judicial review (“JR”) applications which challenged the constitutionality of the restrictions on prisoners' right to be registered as electors and to vote under the Legislative Council Ordinance (“LCO”) (Cap. 542). After hearing the cases in November 2008 and February 2009, the Court declared that the existing across-the-board restrictions on prisoners’ right to be registered as electors and to vote under the LCO were unconstitutional; and that arrangements should be made to enable prisoners and remanded unconvicted persons to vote on the election day in a Legislative Council (“LegCo”) election. The Court granted a temporary suspension order in relation to its declarations relating to prisoners’ voting right up to 31 October 2009.

3. To take forward the Court’s judgment on the JR cases, the Constitutional and Mainland Affairs Bureau (“CMAB”) launched a public consultation exercise on prisoners’ voting right from 9 February to 23 March 2009. Taking into account the views gathered, the CMAB introduced the Voting by Imprisoned Persons Bill into the LegCo on 6 May 2009. The Bill removes the relevant disqualification provisions under the LCO, the Chief Executive Election Ordinance (Cap. 569), the District Councils Ordinance (Cap. 547) and the Village Representative Election Ordinance (Cap. 576). It also removes the disqualification of persons who have been convicted of certain election related or bribery offences from registering as electors and voting at public elections. The Bill also makes provisions under the LCO to enable eligible prisoners who do not have a home in Hong Kong outside the prison to be registered as electors according to other appropriate addresses. Subject to the passage of the Bill, amendment regulations on registration of electors will be introduced into the Council as soon as practicable.

## **AMENDMENT REGULATIONS**

4. The major amendments of the five Amendment Regulations on electoral procedure are highlighted in the following paragraphs.

## Dedicated Polling Stations, Polling Hours and Poll Cards

5. The Amendment Regulations provide for the setting up of dedicated polling stations (“DPSs”) inside penal institutions or other suitable places such as police stations. Electors in custody would be allocated to vote at the DPSs.

6. Due to security reasons, there is a need to separate some persons held in custody from others inside the penal institutions. The Commissioner of Correctional Services (“CCS”) would be empowered to assign a time slot during the polling hours appointed for a DPS situated in a penal institution to each elector concerned to cast his or her vote.

7. The poll cards of electors serving sentence of imprisonment would be sent to their prison as far as practicable so that the poll cards could reach them in good time.

## Canvassing for Votes

8. For the sake of fairness, it is proposed to prohibit canvassing activities by visitors during visits made in their business or official capacities to electors in custody.

## Observing the Poll

9. To ensure that the elections are conducted in a transparent manner, as in other polling stations, candidates and/or their agents may observe the poll at a DPS. However, due to security reasons, some special arrangements are required for DPSs situated in penal institutions. It is proposed that only candidates may enter DPSs set up inside maximum security prisons to observe the poll. For other DPSs situated in penal institutions, either a candidate, an election agent or a polling agent may enter to observe the poll. Application is required for an election agent or a polling agent no later than one week before the polling day. To facilitate the observing of the poll of electors in custody transferred or newly admitted to a penal institution within the week before the polling day, the CCS shall have the discretion to accept applications made within the week before the polling day when such situations arise.

## Special Arrangement for Casting the Votes for District Council (“DC”) and Village Representative (“VR”) Elections

10. It is proposed that an envelope be used to enclose a DC or VR ballot paper cast at a DPS to preserve the secrecy of the votes whenever the ballot paper is required to be sorted in a ballot paper sorting station as described in paragraph 15 below.

11. This arrangement is not necessary for other elections. For LegCo Geographical Constituency Elections, there are only five constituencies. The codes of the constituencies are printed at the back of the ballot papers. Ballot papers cast at DPSs could be sorted at the ballot paper sorting stations according to the code without disclosing the intention of the electors in custody. For LegCo Functional Constituency Elections, Election Committee Subsector Elections and Chief Executive Elections, ballot papers cast at DPSs would be delivered to the respective Central Counting Station and mixed with other ballot papers before the counting of votes. The use of envelopes to enclose the ballot papers and the set up of ballot paper sorting stations are not required.

## Keeping Order at the Dedicated Polling Stations

12. It is proposed that apart from police officers and members of the Civil Aid Service, officers of the Correctional Services Department and other law enforcement agencies (“LEAs”) would also be authorized to help maintain order inside a DPS. For example, these officers would assist in removing electors under their custody from a DPS, if the electors fail to obey the lawful order of the Returning Officer or the Presiding Officer (“PRO”).

13. To maintain order and for security reasons, it is proposed that the PRO of a DPS be empowered to order an elector in custody to leave the DPS, if the elector in custody fails to cast his or her vote after reasonable opportunity has been given to him or her.

14. Due to the sensitive nature of the identity of the electors in custody, in order to protect their privacy and safety, it is proposed that disclosure of their identity by any person be prohibited.

## Ballot Paper Sorting Station (“BPSS”)

15. It is proposed that the Chief Electoral Officer be empowered to designate one or more BPSSs for sorting ballot papers cast at DPSs according to each geographical constituency for LegCo general election or each constituency for DC ordinary election before the ballot papers are transferred to the respective main counting stations for counting of votes. Similarly, the Director of Home Affairs will be empowered to designate one or more BPSSs for sorting ballot papers cast at DPSs according to each village for VR election. Ballot papers from DPSs will be transported to BPSSs for sorting and then the sorted ballot papers will be delivered to the respective counting stations.

## Mixing of Ballot Papers

16. To safeguard the secrecy of votes cast at DPSs, it is proposed that these ballot papers be mixed with the ballot papers cast by other electors before the votes are counted.

## **PUBLIC CONSULTATION**

17. On 18 May 2009, we briefed the LegCo Panel on Constitutional Affairs on the proposed practical arrangements to facilitate the registration of prisoners as electors and the voting by electors in custody. Members did not raise any objection but reminded us to ensure that the efficiency of the counting process would not be adversely affected by the ballot paper sorting process and that arrangement should be made to ensure that all electors in custody would have the opportunity to vote. At the Bills Committee meetings for the Voting by Imprisoned Persons Bill, Members also stressed the importance of providing electors in custody with adequate access to electoral information and ensuring that the elections will be conducted honestly, fairly and openly.

## **IMPLICATIONS OF THE AMENDMENT REGULATIONS**

18. The new voting arrangements will be implemented with the joint efforts of the CMAB<sup>1</sup>, the Home Affairs Department<sup>2</sup>, the EAC, the Registration

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<sup>1</sup> In respect of the voting arrangements for the CE, ECS, LegCo and DC elections.

<sup>2</sup> In respect of the voting arrangements for the VR elections.

and Electoral Office, and the relevant LEAs. Subject to further assessment, these bureau and departments will require additional resources to cope with the additional workload. They will try to absorb the resource requirements as far as possible, and seek any additional resources required in accordance with the established mechanism.

19. The Amendment Regulations are in conformity with the Basic Law, including the provisions concerning human rights, and has no environmental, productivity or sustainability implications. The Amendment Regulations will not affect the current binding effect of the respective Regulations.

## **LEGISLATIVE TIMETABLE**

20. The Amendment Regulations will be published in the Gazette on 19 June 2009 and tabled in the Council on 24 June 2009.

## **PUBLICITY**

21. A press release will be issued and a spokesman will be made available to answer public enquiries.

## **ENQUIRIES**

22. For enquiries about this brief, please contact Mr Hermes CHAN, Deputy Chief Electoral Officer (Special Duties) of the Registration and Electoral Office, at 3107 8521.

Registration and Electoral Office  
18 June 2009

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(LEGISLATIVE COUNCIL)(AMENDMENT)  
REGULATION 2009**

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**ELECTORAL AFFAIRS COMMISSION  
(ELECTORAL PROCEDURE)(LEGISLATIVE  
COUNCIL)(AMENDMENT) REGULATION 2009**

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

**1. Commencement**

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

**2. Interpretation**

(1) Section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D) is amended, in the definition of “counting zone”, by repealing “for a particular constituency”.

(2) Section 2(1) is amended, in the definition of “Presiding Officer”, by repealing everything after “means” and substituting –

“\_

- (a) in relation to a polling station, the person appointed under section 34(1) as the Presiding Officer for that polling station;
- (b) in relation to a ballot paper sorting station, the person appointed under section 66A(1) as the Presiding Officer for that ballot paper sorting station;”.

(3) Section 2(1) is amended, in the definition of “verification of the ballot paper account”, by repealing “or (b)(ii)” and substituting “or (b)(iii), 74AA(c)”.

(4) Section 2(1) is amended by adding –

““ballot paper sorting station” (選票分流站) means a place designated as a ballot paper sorting station under section 28;

“dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 28;

“in custody” (受羈押), in relation to a person, means the person is –

- (a) serving a sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means –

- (a) the Customs and Excise Department;
- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

(5) Section 2(6)(a) is amended by adding “and a ballot paper sorting station” after “main counting station”.

(6) Section 2(6)(b) is amended by repealing “and a special polling station” and substituting “, a special polling station and a dedicated polling station”.

**3. A candidate or a list of candidates may appoint election agent**

(1) Section 23(18)(b) is amended by repealing “or”.

(2) Section 23(18)(c) is amended by repealing the full stop and substituting a semicolon.

(3) Section 23(18) is amended by adding –

“(d) subject to paragraph (e), be present in a dedicated polling station situated in a prison unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to his or her presence; or

(e) be present in a dedicated polling station situated in a maximum security prison.”.

(4) Section 23 is amended by adding –

“(19) The Commissioner of Correctional Services must not give consent to an election agent under subsection (18)(d) in respect of a polling station if a polling agent has been appointed under section 42 by the same candidate or list of candidates for that polling station.

(20) Despite subsection (18)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

(a) an elector in custody or authorized representative in custody who is entitled to vote for the relevant constituency at a dedicated polling station situated in a

prison is admitted or transferred to the prison during that week; and

- (b) the application is lodged without undue delay after the admission or transfer.

(21) If the Commissioner of Correctional Services refuses to give consent under subsection (18)(d), the Commissioner must notify the candidate, any candidate on the list of candidates or the election agent as soon as practicable.”.

#### **4. Chief Electoral Officer to appoint polling hours and to give notice in the Gazette**

- (1) Section 27 is amended by repealing the heading and substituting –  
**“Appointment and notification of polling hours”**.

(2) Section 27(1) is amended by repealing “The” and substituting “Subject to subsections (2A) and (2B), the”.

- (3) Section 27 is amended by adding –

“(2A) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to an elector in custody to whom the polling station is allocated under section 30.

(2B) Subject to section 53A, an elector to whom a time slot is assigned under subsection (2A) may only cast his or her vote during the time slot.”.

- (4) Section 27 is amended by adding –

“(3A) The Commissioner of Correctional Services must assign the time slot so as to give the electors a reasonable opportunity to vote.”.

- (5) Section 27 is amended by adding –

“(4A) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify

all electors to whom time slots are assigned under subsection (2A) of the time slot assigned to each of them.”.

**5. Chief Electoral Officer to designate polling stations, counting stations, small polling stations and main counting stations**

(1) Section 28 is amended by repealing the heading and substituting –  
**“Designation of polling stations, counting stations and ballot paper sorting stations”**.

(2) Section 28(1) is amended by repealing everything after “published in the” and substituting –

“Gazette –

(a) one or more places as a polling station or polling stations for conducting a poll in respect of an election;

(b) one or more places as a counting station or counting stations for counting of the votes; and

(c) one or more places as a ballot paper sorting station or ballot paper sorting stations for sorting GC ballot papers received from dedicated polling stations in a general election.”.

(3) Section 28 is amended by adding –

“(1BA) Without affecting subsection (1B), the Chief Electoral Officer must designate one or more places as a dedicated polling station or dedicated polling stations at which electors in custody or authorized representatives in custody are allocated to vote.”.

(4) Section 28(1C) is amended by repealing everything after “is a small polling station” and substituting –

“or a dedicated polling station, the Chief Electoral Officer must designate a polling station (other than a small polling station or a dedicated polling station) as a main counting station for the purpose of counting the votes cast at the polling station and the small polling station, the small polling stations, the dedicated polling station or the dedicated polling stations, as may be appropriate.”.

**6. Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors and authorized representatives**

(1) Section 30(4)(a) is amended by repealing “must allocate to a GC elector, a GC polling station” and substituting “subject to paragraph (aa), must allocate to a GC elector a GC polling station that is, as far as practicable,”.

(2) Section 30(4) is amended by adding –

“(aa) may allocate to a GC elector who will be serving a sentence of imprisonment on the polling day a dedicated polling station to cast the vote for the geographical constituency;”.

(3) Section 30(5) is amended by repealing “(4)(a),” and substituting “(4)(a) or (aa)”.

(4) Section 30 is amended by adding –

“(6) A prescribed public officer must, upon a request by the Chief Electoral Officer, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Chief Electoral Officer to perform his or her functions under this section in relation to electors and authorized representatives.

(7) In subsection (6) –

“prescribed information” (訂明資料) means –

- (a) the name of the person;
- (b) the number of the person’s identity document; and
- (c) the name and address of the premises in which the person is detained;

“prescribed public officer” (訂明公職人員) means –

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

**7. Chief Electoral Officer to send poll cards to electors and authorized representatives**

Section 31 is amended by adding –

“(3A) A poll card sent to an elector or authorized representative who will be serving a sentence of imprisonment in a prison on the polling day must be addressed to the elector or authorized representative and sent, as far as practicable, to the prison.”.

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

(1) Section 39(1) is amended by repealing everything after “Presiding” and substituting –

“Officer of a polling station must ensure that a notice providing information for the guidance of electors and authorized representatives in voting procedure is –

- (a) exhibited –

- (i) if the polling station is not a dedicated polling station, outside the polling station; or
  - (ii) if the polling station is a dedicated polling station, inside the polling station; and
- (b) exhibited inside every voting compartment of the polling station.”.

(2) Section 39(1A) is amended by repealing everything after “the votes” and substituting “cast at the polling station is exhibited outside the polling station.”.

(3) Section 39 is amended by adding –

“(1B) The Presiding Officer of a dedicated polling station must ensure that, before the commencement of the poll, there is exhibited inside the polling station a notice providing –

- (a) information of the ballot paper sorting station, if any, designated for sorting the ballot papers received from the polling station; and
- (b) information of the counting station or stations designated for counting the votes cast at the polling station.”.

## **9. Presiding Officer to keep order in no canvassing zone and no staying zone**

Section 41(3) is amended by repealing everything after “be removed” and substituting –

“by –

- (a) a police officer;

- (b) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

**10. Candidates may appoint polling agents**

- (1) Section 42 is amended by adding –

“(8A) Despite subsections (1), (3), (4), (5) and (8) –

- (a) subject to paragraphs (b) and (c), only one polling agent may be appointed by a candidate or a list of candidates for a dedicated polling station situated in a prison;
- (b) no polling agent may be appointed by a candidate or a list of candidates for a dedicated polling station situated in a prison if the Commissioner of Correctional Services has consented under section 23(18)(d) to the presence of the election agent of that candidate or list of candidates in that polling station;
- (c) no polling agent may be appointed for a dedicated polling station situated in a maximum security prison; and
- (d) without affecting subsection (10), the appointment of a polling agent for a

dedicated polling station situated in a prison is not effective unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to the appointment.

(8B) Despite subsection (8A)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

- (a) an elector in custody or authorized representative in custody who is entitled to vote for the relevant constituency at the polling station concerned is admitted or transferred to the prison concerned during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(8C) If the Commissioner of Correctional Services refuses to give consent under subsection (8A)(d), the Commissioner must notify the candidate, any candidate on the list of candidates or the election agent of the candidate or list of candidates as soon as practicable.”.

(2) Section 42(9) is amended by repealing everything before paragraph (a) and substituting –

“(9) A notice appointing a polling agent for a polling station other than a dedicated polling station situated in a prison must, if it is not given under subsection (8), be delivered on the polling day to the Presiding Officer of the polling station –”.

**11. Chief Electoral Officer to delineate polling stations on a map and display map outside the polling station**

(1) Section 43 is amended, in the heading, by repealing “**outside the polling station**”.

(2) Section 43(1) is amended by repealing everything after “or plans.”.

(3) Section 43 is amended by adding –

“(1A) The Chief Electoral Officer must display a map or plan referred to in subsection (1) –

(a) subject to paragraph (b), outside the polling station concerned; and

(b) if the map or plan is prepared for a dedicated polling station, inside the polling station.”.

**12. Who may enter or be present at a polling station**

Section 44 is amended by adding –

“(6A) Subsection (6) does not apply to a dedicated polling station situated in a maximum security prison.”.

**13. What constitutes an offence at a polling station**

(1) Section 45(6) is amended by adding –

“(ga) an officer of the Correctional Services Department on duty at a dedicated polling station;

(gb) an officer of any law enforcement agency on duty at a dedicated polling station;”.

(2) Section 45(6)(i) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

**14. Presiding Officer to keep order at the polling station**

(1) Section 46 is amended by adding –

“(2A) If an elector or authorized representative who is allocated to vote at a dedicated polling station fails to cast his or her vote without undue delay pursuant to section 54(4), the Returning Officer or the Presiding Officer may order him or her to leave the polling station immediately.”.

(2) Section 46(3) is amended by repealing everything after “do so under” and substituting –

“subsection (2) or (2A), the person may be removed –

(a) if the polling station is not a dedicated polling station, by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or

(b) if the polling station is a dedicated polling station, by –

(i) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;

(ii) an officer of the Correctional Services Department; or

(iii) an officer of any law enforcement agency.”.

(3) Section 46(5) is amended by repealing “this section” and substituting “subsection (2)”.

**15. A candidate or election agent or polling agent may challenge a person who has applied for a ballot paper or who has voted**

(1) Section 52(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(2) Section 52(2) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(3) Section 52 is amended by adding –

“(2A) The step specified for the purposes of subsections (1) and (2) is –

- (a) if the polling station is not a dedicated polling station, requesting a police officer to arrest the person concerned; or
- (b) if the polling station is a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

(4) Section 52(3) is amended by adding “pursuant to a request made” before “under subsection (2)”.

**16. Elector who has not cast vote may return to cast vote with permission**

(1) Section 53A(1)(c)(iii) is amended by repealing “and”.

(2) Section 53A(1)(d) is amended by repealing the full stop and substituting “; and”.

(3) Section 53A(1) is amended by adding –

“(e) if the polling station is a dedicated polling station situated in a prison, the elector returns to the polling station within the time slot assigned to him or her under subsection (2A) or section 27(2A).”.

(4) Section 53A is amended by adding –

“(2A) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to an elector under subsection (1), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.”.

(5) Section 53A(3)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

(6) Section 53A is amended by adding –

“(5A) If an elector in custody leaves a dedicated polling station situated in a prison under subsection (5), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.

(5B) The right of an elector in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (5) is subject to the elector’s returning to the polling station within the time slot assigned to him or her under subsection (5A) or section 27(2A).”.

(7) Section 53A(6)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

**17. Steps to be taken at the close of the poll: a polling station which is not a small polling station**

Section 63 is amended, in the heading, by repealing “**not a small polling**” and substituting “**also a counting**”.

**18. Steps to be taken at the close of the poll: a small polling station**

(1) Section 63A is amended, in the heading, by repealing “**small polling**” and substituting “**polling station which is not a counting**”.

(2) Section 63A(1) is amended by adding “station or a dedicated polling” after “small polling”.

(3) Section 63A is amended by adding –

“(2A) An election agent or a polling agent may not stay under subsection (2) in a dedicated polling station situated in a maximum security prison.”.

(4) Section 63A is amended by adding –

“(4) The Presiding Officer of the dedicated polling station must then deliver the ballot box or boxes, the sealed packets and the ballot paper accounts prepared by that Officer –

(a) in the case of a general election, to the Presiding Officer of the ballot paper sorting station;

- (b) in the case of a by-election for a geographical constituency, to the Presiding Officer of the main counting station concerned;
- (c) in the case of a by-election for a functional constituency, to the Returning Officer at the counting station.”.

**19. Returning Officer and Presiding Officer to give notice of time and place of counting of votes to candidates**

(1) Section 65 is amended by adding –

“(2A) Despite subsection (2), the time determined under subsection (1) in respect of sorting ballot papers at the ballot paper sorting station –

- (a) must be a time after the poll has closed at all the dedicated polling stations situated in prisons at which polling for the constituency concerned was conducted; and
- (b) may be a time before the poll has closed at all the other polling stations at which polling for the constituency concerned is conducted.”.

(2) Section 65(9) is amended by adding “or a dedicated polling station” before the full stop.

**20. Section 66A added**

The following is added –

**“66A. Appointment of Presiding Officer of ballot paper sorting station**

(1) The Chief Electoral Officer must appoint a Presiding Officer to preside at each ballot paper sorting station.

(2) The Chief Electoral Officer may, at any time, with reasonable cause, revoke any appointment made under subsection (1).”.

**21. Ballot boxes for FC ballot papers to be delivered to the counting station**

(1) Section 70(1)(a) is amended by repealing “; and” and substituting a semicolon.

(2) Section 70(1)(b) is amended by repealing the full stop and substituting “; and”.

(3) Section 70(1) is amended by adding –

“(c) the Presiding Officer of a ballot paper sorting station must 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(4) for the functional constituencies.”.

(4) Section 70(2) is amended by adding “or 63A” after “section 63”.

**22. Arrangements for the supervision of counting station and counting zone**

Section 71(6) is amended by adding “or a dedicated polling station” before the full stop.

**23. Arrangements for verification of ballot paper account at GC counting station**

(1) Section 74A(1)(a) is amended by adding “or a ballot paper sorting station” before “must,”.

(2) Section 74A(1)(b) is amended by repealing everything after “, at the counting” and substituting –

“zone –

- (i) count and record the number of GC ballot papers in each ballot box under that Officer's charge, and verify the ballot paper account by comparing it with the number of GC ballot papers so recorded;
- (ii) count and record the number of GC ballot papers in each receptacle received from a ballot paper sorting station, and verify the statement prepared under section 74AA(f) by comparing it with the number of GC ballot papers so recorded; and
- (iii) prepare a statement in writing as to the result of the verification;”.

**24. Section 74AA added**

The following is added –

**“74AA. Arrangements for sorting in ballot paper sorting stations**

The Presiding Officer of a ballot paper sorting station must –

- (a) count and record the number of GC ballot papers in each ballot box under that Officer's charge;
- (b) verify the ballot paper account by comparing it with the number of GC ballot papers recorded under paragraph (a);
- (c) prepare a statement in writing as to the result of the verification;
- (d) sort the GC ballot papers according to each geographical constituency;
- (e) record the number of GC ballot papers according to each geographical constituency;
- (f) prepare a statement in writing as to the number of GC ballot papers recorded under paragraph (e);

- (g) make into separate bundles the sorted GC ballot papers together with the relevant statement prepared under paragraph (f);
- (h) place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone; and
- (i) arrange the receptacles to be delivered to the Presiding Officers of the respective main counting stations of the relevant geographical constituencies.”.

**25. Counting of votes for geographical constituencies**

Section 75(4A) is amended by repealing everything after “together” and substituting –

“with –

- (a) the ballot papers that have been delivered to the main counting station from one or more small polling stations; and
- (b) the ballot papers that have been delivered to the main counting station from –
  - (i) in the case of a general election, one or more ballot paper sorting stations;
  - (ii) in the case of a by-election, one or more dedicated polling stations,

before counting the votes at the main counting station.”.

**26. Returning Officer or Presiding Officer to seal ballot papers in packets**

Section 85(5) is amended by adding “, a dedicated polling station or a ballot paper sorting station” before the full stop.

**27. Returning Officer or Presiding Officer to send ballot papers, accounts, packets, etc. to Chief Electoral Officer**

Section 86(2) is amended by adding “, a dedicated polling station or a ballot paper sorting station” before the full stop.

**28. Section 90A added**

The following is added –

**“90A. Certain visitors of electors or authorized representatives in custody not to canvass for votes**

(1) If –

(a) a person (“visitor”) visits in a certain capacity an elector in custody or authorized representative in custody for a business or official purpose; and

(b) another person who is not acting in that capacity is not allowed to visit the elector or authorized representative for that purpose,

the visitor commits an offence if he or she, during the visit, canvasses for votes for the purpose of an election.

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

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

Section 95(5) is amended by adding “, an officer of the Correctional Services Department, an officer of any law enforcement agency” after “police officer”.

**30. Enforcement of provisions as to secrecy**

(1) Section 96 is amended by adding –

“(1A) A person who divulges to any other person the identity of an elector in custody commits an offence.”.

(2) Section 96(2) is amended by repealing “Subsection (1) does” and substituting “Subsections (1) and (1A) do”.

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

Section 97 is amended by adding –

“(1A) If a declaration is made under subsection (1), the Commissioner of Correctional Services or the head of a law enforcement agency must, as soon as practicable, inform all electors in custody and authorized representatives in custody detained by him or her who have not yet voted in the poll of the declaration.”.

Made this 16<sup>th</sup> day of June 2009.

The Hon. Mr. Justice  
PANG Kin-kee  
Chairman,  
Electoral Affairs Commission

Lawrence LOK Ying-kam  
Member,  
Electoral Affairs Commission

Andrew CHAN Chi-fai  
Member,  
Electoral Affairs Commission

### **Explanatory Note**

The main object of this Regulation is to amend the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D)(“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Legislative Council election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. Geographical constituency ballot papers cast at dedicated polling stations in a general election will be sorted at ballot paper sorting stations before they are sent to counting stations for counting.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

#### Amendments to Part I of the principal Regulation

3. Section 2 amends section 2 of the principal Regulation to amend several definitions and add several new definitions, including the definitions of “ballot paper sorting station” and “dedicated polling station”.

#### Amendments to Part II of the principal Regulation (pre-polling matters)

4. Section 23 of the principal Regulation enables a candidate or a list of candidates to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services. Such consent will not be given in respect of a polling station if a polling agent has been appointed by the same candidate or list of candidates for that polling station.

Amendments to Part III of the principal Regulation (arrangement for polling)

5. Section 4 amends section 27 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time slots to electors in custody. They may only vote during the time slots assigned to them.

6. Section 5 amends section 28 of the principal Regulation to empower the Chief Electoral Officer to designate dedicated polling stations and ballot paper sorting stations.

7. Section 6 amends section 30 of the principal Regulation to empower the Chief Electoral Officer to allocate dedicated polling stations to geographical constituency electors who will be serving a sentence of imprisonment on the polling day. To enable the Chief Electoral Officer to perform this function, new provisions (the new section 30(6) and (7) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 31 of the principal Regulation, poll cards containing information on polling are sent to electors before the poll. Section 7 amends that section to provide that poll cards sent to electors who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 39 of the principal Regulation to require the Presiding Officer of a dedicated polling station to exhibit a notice inside the polling station to provide information of the relevant ballot paper sorting station and counting station.

10. Section 41 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 9 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

11. Section 42 of the principal Regulation provides for appointment of polling agents by candidates. Section 10 amends that section to impose, for security reason, restrictions in relation to appointment of polling agents for dedicated polling stations situated in prisons. The consent of the Commissioner of Correctional Services is required.

12. Section 11 amends section 43 of the principal Regulation to require the Chief Electoral Officer to display a map or plan delineating a dedicated polling station inside the polling station.

13. Under section 44 of the principal Regulation, a polling agent may enter or be present in a polling station. Section 12 amends that section to provide, for security reason, that a polling agent may not be present in a dedicated polling station situated in a maximum security prison.

14. Section 45 of the principal Regulation imposes restrictions on communicating with electors or using a telecommunication device in a polling station but provides for an exemption for election officials. Section 13 amends that section to extend that exemption to officers of the Correctional Services Department and other law enforcement agencies on duty at dedicated polling stations.

15. Section 14 amends section 46 of the principal Regulation to provide that an elector who fails to cast his or her vote without undue delay may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

16. Section 52 of the principal Regulation provides that an elector who is suspected to have engaged in corrupt conduct by impersonation may be arrested by the police. Section 15 amends that section to provide that in a dedicated polling station, such an elector is to be removed by an officer of the Correctional Services Department or any law enforcement agency who is to report the case to the police.

17. Section 53A of the principal Regulation provides that an elector who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 16 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

18. Section 18 amends section 63A of the principal Regulation to provide for the steps to be taken by the Presiding Officer at the close of the poll at a dedicated polling station.

Amendments to Part IV of the principal Regulation (counting stage)

19. The polling hours appointed for dedicated polling stations may be shorter than those appointed for other polling stations. Section 19 amends section 65 of the principal Regulation to provide that the sorting of ballot papers received from dedicated polling stations situated in prisons at ballot paper sorting stations may commence before the poll has closed at all the other polling stations.

20. Section 20 adds a new section which confers on the Chief Electoral Officer a power to appoint Presiding Officers for ballot paper sorting stations.

21. Section 21 amends section 70 of the principal Regulation to make provision for delivery of ballot papers from ballot paper sorting stations to counting stations.

22. Section 22 makes a minor consequential amendment to section 71(6) of the principal Regulation.

23. Section 23 amends section 74A of the principal Regulation to extend the coverage of that section to ballot papers received from ballot paper sorting stations.

24. Section 24 adds the new section 74AA to provide for the arrangements for ballot paper sorting in ballot paper sorting stations.

25. Section 25 amends section 75 of the principal Regulation to provide that before the counting of votes begins, the ballot papers received from dedicated

polling stations and other polling stations must be mixed with those at the counting stations.

Amendments to Part V of the principal Regulation (disposal of document)

26. Sections 26 and 27 make minor consequential amendments to sections 85(5) and 86(2) of the principal Regulation respectively.

Amendments to Part VI of the principal Regulation (miscellaneous matters)

27. Section 28 adds the new section 90A to prohibit a person who visits an elector in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

28. Section 95 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 29 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

29. Section 30 amends section 96 of the principal Regulation to prohibit divulging the identity of an elector in custody.

30. Section 31 amends section 97 of the principal Regulation to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to inform electors in custody detained by them of a declaration of the termination of the election proceedings.

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(DISTRICT COUNCILS)(AMENDMENT)  
REGULATION 2009**

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**ELECTORAL AFFAIRS COMMISSION  
(ELECTORAL PROCEDURE)(DISTRICT  
COUNCILS)(AMENDMENT) REGULATION 2009**

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

**1. Commencement**

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

**2. Interpretation**

(1) Section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation (Cap. 541 sub. leg. F) is amended, in the definition of “counting zone”, by repealing “for a particular constituency”.

(2) Section 2(1) is amended, in the definition of “Presiding Officer”, by repealing everything after “means” and substituting –

“\_

- (a) in relation to a polling station, the person appointed under section 37(1) as the Presiding Officer for that polling station;
- (b) in relation to a ballot paper sorting station, the person appointed under section 66A(1) as the Presiding Officer for that ballot paper sorting station;”.

(3) Section 2(1) is amended, in the definition of “verification of the ballot paper account”, by adding “or 75A(c)” after “section 75”.

(4) Section 2(1) is amended by adding –

““ballot paper sorting station” (選票分流站) means a place designated as a ballot paper sorting station under section 31;

“dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 31;

“in custody” (受羈押), in relation to a person, means the person is –

- (a) serving a sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means –

- (a) the Customs and Excise Department;
- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

(5) Section 2(3)(c) is amended by repealing “and dominant counting station” and substituting “, dominant counting station and ballot paper sorting station”.

(6) Section 2(3)(d) is amended by repealing “and special polling station” and substituting “, special polling station and dedicated polling station”.

### **3. A candidate may appoint election agent**

(1) Section 26(15)(b) is amended by repealing “or”.

(2) Section 26(15)(c) is amended by repealing the full stop and substituting a semicolon.

(3) Section 26(15) is amended by adding –

“(d) subject to paragraph (e), be present in a dedicated polling station situated in a prison unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to his or her presence; or

(e) be present in a dedicated polling station situated in a maximum security prison.”.

(4) Section 26 is amended by adding –

“(16) The Commissioner of Correctional Services must not give consent to an election agent under subsection (15)(d) in respect of a polling station if a polling agent has been appointed under section 45 by the same candidate for that polling station.

(17) Despite subsection (15)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

(a) an elector in custody who is entitled to vote for the relevant constituency at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and

(b) the application is lodged without undue delay after the admission or transfer.

(18) If the Commissioner of Correctional Services refuses to give consent under subsection (15)(d), the Commissioner must notify the candidate or the election agent as soon as practicable.”.

**4. Chief Electoral Officer to appoint polling hours and to give notice in the Gazette**

- (1) Section 30 is amended by repealing the heading and substituting –  
**“Appointment and notification of polling hours”**.
- (2) Section 30(1) is amended by repealing “The” and substituting “Subject to subsections (2A) and (2B), the”.
- (3) Section 30 is amended by adding –
  - “(2A) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to an elector in custody to whom the polling station is allocated under section 33.
  - (2B) Subject to section 56A, an elector to whom a time slot is assigned under subsection (2A) may only cast his or her vote during the time slot.”
- (4) Section 30 is amended by adding –
  - “(3A) The Commissioner of Correctional Services must assign the time slot so as to give the electors a reasonable opportunity to vote.”
- (5) Section 30 is amended by adding –
  - “(5) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all electors to whom time slots are assigned under subsection (2A) of the time slot assigned to each of them.”

**5. Chief Electoral Officer to designate polling stations, counting stations, small polling stations, main counting stations and dominant counting stations**

- (1) Section 31 is amended by repealing the heading and substituting –

**“Designation of polling stations, counting stations and ballot paper sorting stations”.**

(2) Section 31(1) is amended by repealing everything after “published in the” and substituting –

“Gazette –

- (a) one or more places as a polling station or polling stations for conducting a poll in respect of an election;
- (b) one or more places as a counting station or counting stations for counting of the votes; and
- (c) one or more places as a ballot paper sorting station or ballot paper sorting stations for sorting ballot papers received from dedicated polling stations in an ordinary election.”.

(3) Section 31 is amended by adding –

“(1CA) Without affecting subsection (1C), the Chief Electoral Officer must designate one or more places as a dedicated polling station or dedicated polling stations at which electors in custody are allocated to vote.”.

(4) Section 31(1D) is amended by repealing everything after “them is a” and substituting –

“small polling station, a special polling station or a dedicated polling station, the Chief Electoral Officer must designate a polling station (other than a small polling station, a special polling station or a dedicated polling station) as a main counting station for the purpose of counting the votes cast at the polling station and the small polling station, the small polling stations, the special polling

station, the special polling stations, the dedicated polling station or the dedicated polling stations, as may be appropriate.”.

(5) Section 31(6) is amended by repealing everything after “the polling stations” and substituting “and counting stations.”.

**6. Chief Electoral Officer to assign polling stations for constituencies and to allocate polling stations to electors**

(1) Section 33(3) is amended by repealing everything after “Electoral” and substituting –

“Officer –

- (a) subject to paragraph (b), must allocate to an elector a polling station that is, as far as practicable, close to his or her registered residential address; and
- (b) may allocate to an elector who will be serving a sentence of imprisonment on the polling day a dedicated polling station.”.

(2) Section 33 is amended by adding –

“(5) A prescribed public officer must, upon a request by the Chief Electoral Officer, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Chief Electoral Officer to perform his or her functions under this section in relation to electors.

(6) In subsection (5) –

“prescribed information” (訂明資料) means –

- (a) the name of the person;
- (b) the number of the person’s identity document; and

- (c) the name and address of the premises in which the person is detained;

“prescribed public officer” (訂明公職人員) means –

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

**7. Chief Electoral Officer to send poll cards to electors**

Section 34 is amended by adding –

“(2A) A poll card sent to an elector who will be serving a sentence of imprisonment in a prison on the polling day must be addressed to the elector and sent, as far as practicable, to the prison.”.

**8. Chief Electoral Officer to appoint or remove Presiding Officers, etc. for each polling station**

Section 37 is amended by adding –

“(4) Where the same place is designated as both a polling station and a counting station under section 31(1A), the Presiding Officer of the polling station is to be regarded as the Presiding Officer of the counting station.”.

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

(1) Section 42(1) is amended by repealing everything after “Presiding” and substituting –

“Officer of a polling station must ensure that a notice providing information for the guidance of electors in voting procedure is –

- (a) exhibited –

- (i) if the polling station is not a dedicated polling station, outside the polling station; or
  - (ii) if the polling station is a dedicated polling station, inside the polling station; and
- (b) exhibited inside every voting compartment of the polling station.”.

(2) Section 42(1A) is amended by repealing everything after “the votes” and substituting “cast at the polling station is exhibited outside the polling station.”.

(3) Section 42 is amended by adding –

“(1B) The Presiding Officer of a dedicated polling station must ensure that, before the commencement of the poll, there is exhibited inside the polling station a notice providing –

- (a) information of the ballot paper sorting station, if any, designated for sorting the ballot papers received from the polling station; and
- (b) information of the main counting station designated for counting the votes cast at the polling station.”.

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

Section 44(3) is amended by repealing everything after “be removed” and substituting –

“by –

- (a) a police officer;

- (b) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

## **11. Candidates may appoint polling agents**

- (1) Section 45 is amended by adding –

“(5A) Despite subsections (1), (3) and (5) –

- (a) subject to paragraphs (b) and (c), only one polling agent may be appointed by a candidate for a dedicated polling station situated in a prison;
- (b) no polling agent may be appointed by a candidate for a dedicated polling station situated in a prison if the Commissioner of Correctional Services has consented under section 26(15)(d) to the presence of the election agent of that candidate in that polling station;
- (c) no polling agent may be appointed for a dedicated polling station situated in a maximum security prison; and
- (d) without affecting subsection (7), the appointment of a polling agent for a dedicated polling station situated in a prison is not effective unless, on an

application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to the appointment.

(5B) Despite subsection (5A)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

- (a) an elector in custody who is entitled to vote for the relevant constituency at the polling station concerned is admitted or transferred to the prison concerned during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(5C) If the Commissioner of Correctional Services refuses to give consent under subsection (5A)(d), the Commissioner must notify the candidate or the election agent of the candidate as soon as practicable.”.

(2) Section 45(6) is amended by repealing everything before paragraph (a) and substituting –

“(6) A notice appointing a polling agent for a polling station other than a dedicated polling station situated in a prison must, if it is not given under subsection (5), be delivered on the polling day to the Presiding Officer of the polling station –”.

**12. Chief Electoral Officer to delineate polling stations on a map and display map outside the polling station**

(1) Section 46 is amended, in the heading, by repealing “**outside the polling station**”.

(2) Section 46(1) is amended by repealing everything after “plans.”.

(3) Section 46 is amended by adding –

“(1A) The Chief Electoral Officer must display a map or plan referred to in subsection (1) –

(a) subject to paragraph (b), outside the polling station concerned; and

(b) if the map or plan is prepared for a dedicated polling station, inside the polling station.”.

**13. Who may enter or be present at a polling station**

Section 47 is amended by adding –

“(6A) Subsection (6) does not apply to a dedicated polling station situated in a maximum security prison.”.

**14. What constitutes an offence at a polling station**

(1) Section 48(6) is amended by adding –

“(ga) an officer of the Correctional Services Department on duty at a dedicated polling station;

(gb) an officer of any law enforcement agency on duty at a dedicated polling station;”.

(2) Section 48(6)(i) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

**15. Presiding Officer to keep order at the polling station**

(1) Section 49 is amended by adding –

“(2A) If an elector who is allocated to vote at a dedicated polling station fails to cast his or her vote without undue delay pursuant to section 57(3), the Returning Officer or the Presiding Officer may order him or her to leave the polling station immediately.”.

(2) Section 49(3) is amended by repealing everything after “do so under” and substituting –

“subsection (2) or (2A), the person may be removed –

(a) if the polling station is not a dedicated polling station, by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or

(b) if the polling station is a dedicated polling station, by –

(i) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;

(ii) an officer of the Correctional Services Department; or

(iii) an officer of any law enforcement agency.”.

(3) Section 49(5) is amended by repealing “this section” and substituting “subsection (2)”.

**16. A candidate or election agent or polling agent may challenge a person who has applied for a ballot paper or who has voted**

(1) Section 55(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(2) Section 55(2) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(3) Section 55 is amended by adding –

“(2A) The step specified for the purposes of subsections (1) and (2) is –

(a) if the polling station is not a dedicated polling station, requesting a police officer to arrest the person concerned; or

(b) if the polling station is a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

(4) Section 55(3) is amended by adding “pursuant to a request made” before “under subsection (2)”.

**17. Elector who has not cast vote may return to cast vote with permission**

(1) Section 56A(1)(c)(iii) is amended by repealing “and”.

(2) Section 56A(1)(d) is amended by repealing the full stop and substituting “; and”.

(3) Section 56A(1) is amended by adding –

“(e) if the polling station is a dedicated polling station situated in a prison, the elector returns to the polling station within

the time slot assigned to him or her under subsection (2A) or section 30(2A).”.

(4) Section 56A is amended by adding –

“(2A) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to an elector under subsection (1), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.”.

(5) Section 56A(3)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

(6) Section 56A is amended by adding –

“(5A) If an elector in custody leaves a dedicated polling station situated in a prison under subsection (5), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.

(5B) The right of an elector in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (5) is subject to the elector’s returning to the polling station within the time slot assigned to him or her under subsection (5A) or section 30(2A).”.

(7) Section 56A(6)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

## 18. Procedure for voting

(1) Section 57(1) is amended by repealing everything after “ballot paper.”.

(2) Section 57(2) is repealed and the following substituted –

“(2) After marking the ballot paper, the elector must –

(a) before leaving the voting compartment, fold the ballot paper so that the marked side is inside; and

(b) put the folded ballot paper into the ballot box.”.

(3) Section 57 is amended by adding –

“(2A) Despite subsection (2), in an ordinary election an elector in custody must, after marking the ballot paper –

(a) before leaving the voting compartment –

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

(ii) put the folded ballot paper into the envelope issued together with the ballot paper; and

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

(4) Section 57(4) is amended by adding “or an envelope referred to in subsection (2A)” after “ballot paper”.

## 19. Steps to be taken at the close of the poll: a polling station which is not a small polling station or a special polling station

(1) Section 63 is amended, in the heading, by repealing “**not a small polling station or a special polling**” and substituting “**also a counting**”.

(2) Section 63(1) is amended by repealing “(other than a small polling station or a special polling station)”.

**20. Steps to be taken at the close of the poll: a small polling station or a special polling station**

(1) Section 63A is amended, in the heading, by repealing “**small polling station or a special polling**” and substituting “**polling station which is not a counting**”.

(2) Section 63A(1) is amended by repealing “or a special” and substituting “, a special polling station or a dedicated”.

(3) Section 63A is amended by adding –

“(2A) An election agent or a polling agent may not stay under subsection (2) in a dedicated polling station situated in a maximum security prison.”.

(4) Section 63A is amended by adding –

“(4) The Presiding Officer of the dedicated polling station must then deliver the ballot box or boxes, the sealed packets and the ballot paper accounts prepared by that Officer –

(a) in the case of an ordinary election, to the Presiding Officer of the ballot paper sorting station;

(b) in the case of a by-election, to the Presiding Officer of the main counting station concerned.”.

**21. Returning Officer and Presiding Officer to give notice of place and time of the counting of votes to candidates**

(1) Section 65 is amended by adding –

“(2A) Despite subsection (2), the time determined under subsection (1) in respect of sorting ballot papers at the ballot paper sorting station –

(a) must be a time after the poll has closed at all the dedicated polling stations situated

in prisons at which polling for the constituency concerned was conducted; and

- (b) may be a time before the poll has closed at all the other polling stations at which polling for the constituency concerned is conducted.”.

(2) Section 65(9) is amended by repealing everything after “does not” and substituting –

“include –

- (a) a Presiding Officer of a small polling station;
- (b) a Presiding Officer of a special polling station; or
- (c) a Presiding Officer of a dedicated polling station.”.

## 22. Section 66A added

The following is added –

### **“66A. Appointment of Presiding Officer of ballot paper sorting station**

(1) The Chief Electoral Officer must appoint a Presiding Officer to preside at each ballot paper sorting station.

(2) The Chief Electoral Officer may, at any time, with reasonable cause, revoke any appointment made under subsection (1).”.

## 23. Arrangements for the supervision of counting stations and counting zones

Section 72(4) is amended by repealing everything after “does not” and substituting –

“include –

- (a) a Presiding Officer of a small polling station;
- (b) a Presiding Officer of a special polling station; or
- (c) a Presiding Officer of a dedicated polling station.”.

**24. Presiding Officer to verify ballot paper account**

(1) Section 75(1) is amended by repealing “other than a Presiding Officer of a main counting station” and substituting “(other than a Presiding Officer of a main counting station, a dedicated polling station or a ballot paper sorting station)”.

(2) Section 75(1A) is amended by repealing everything after “counting station” and substituting –

“must, before counting the votes in accordance with section 76 –

- (a) count and record the number of ballot papers in each ballot box under that Officer’s charge, and verify the ballot paper account by comparing it with the number of ballot papers so recorded;
- (b) open all envelopes in each receptacle received from a ballot paper sorting station, count and record the number of ballot papers in the envelopes, and verify the statement prepared under section 75A(f) by comparing it with the number of ballot papers so recorded; and
- (c) prepare a statement in writing as to the result of the verification.”.

**25. Section 75A added**

The following is added –

**“75A. Arrangements for sorting in ballot paper sorting stations**

In an ordinary election, the Presiding Officer of a ballot paper sorting station must –

- (a) count and record the number of envelopes in each ballot box under that Officer’s charge;
- (b) verify the ballot paper account by comparing it with the number of envelopes recorded under paragraph (a);
- (c) prepare a statement in writing as to the result of the verification;
- (d) sort the envelopes according to each constituency;
- (e) record the number of envelopes according to each constituency;
- (f) prepare a statement in writing as to the number of envelopes recorded under paragraph (e);
- (g) make into separate bundles the sorted envelopes together with the relevant statement prepared under paragraph (f);
- (h) place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone; and
- (i) arrange the receptacles to be delivered to the Presiding Officers of the respective main counting stations of the relevant constituencies.”.

**26. Counting of votes**

Section 76(2) is amended by repealing everything after “together” and substituting –

“with –

- (a) the ballot papers that have been delivered to the main counting station from one or more small polling stations or special polling stations; and
- (b) the ballot papers that have been delivered to the main counting station from –
  - (i) in the case of an ordinary election, one or more ballot paper sorting stations;
  - (ii) in the case of a by-election, one or more dedicated polling stations,

before counting the votes at the main counting station.”.

**27. Presiding Officer to seal ballot papers in packets**

Section 83(5) is amended by repealing “or a special polling station which is not so designated” and substituting “, a special polling station which is not so designated, a dedicated polling station or a ballot paper sorting station”.

**28. Chief Electoral Officer to receive ballot papers, accounts, packets, etc.**

Section 84(3) is amended by repealing “or a special polling station which is not so designated” and substituting “, a special polling station which is not so designated, a dedicated polling station or a ballot paper sorting station”.

**29. Section 88A added**

The following is added –

**“88A. Certain visitors of electors in custody not to canvass for votes**

- (1) If –
  - (a) a person (“visitor”) visits in a certain capacity an elector in custody for a business or official purpose; and

(b) another person who is not acting in that capacity is not allowed to visit the elector for that purpose, the visitor commits an offence if he or she, during the visit, canvasses for votes for the purpose of an election.

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

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

Section 93(5) is amended by adding “, an officer of the Correctional Services Department, an officer of any law enforcement agency” after “police officer”.

### **31. Enforcement of provisions as to secrecy**

(1) Section 94 is amended by adding –

“(1A) A person who divulges to any other person the identity of an elector in custody commits an offence.”.

(2) Section 94(2) is amended by repealing “Subsection (1) does” and substituting “Subsections (1) and (1A) do”.

### **32. Procedure after election proceedings are terminated**

Section 95 is amended by adding –

“(1A) If a declaration is made under subsection (1), the Commissioner of Correctional Services or the head of a law enforcement agency must, as soon as practicable, inform all electors in custody detained by him or her who have not yet voted in the poll of the declaration.”.

Made this 16<sup>th</sup> day of June 2009.

The Hon. Mr. Justice  
PANG Kin-kee  
Chairman,  
Electoral Affairs Commission

Lawrence LOK Ying-kam  
Member,  
Electoral Affairs Commission

Andrew CHAN Chi-fai  
Member,  
Electoral Affairs Commission

### **Explanatory Note**

The main object of this Regulation is to amend the Electoral Affairs Commission (Electoral Procedure)(District Councils) Regulation (Cap. 541 sub. leg. F)(“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in District Council election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. Ballot papers cast at dedicated polling stations in an ordinary election will be sorted in ballot paper sorting stations before they are sent to counting stations for counting.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

#### Amendments to Part I of the principal Regulation

3. Section 2 amends section 2 of the principal Regulation to amend several definitions and add several new definitions, including the definitions of “ballot paper sorting station” and “dedicated polling station”.

#### Amendments to Part II of the principal Regulation (pre-polling matters)

4. Section 26 of the principal Regulation enables a candidate to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services. Such consent will not be given in respect of a polling station if a polling agent has been appointed by the same candidate for that polling station.

Amendments to Part III of the principal Regulation (arrangement for polling)

5. Section 4 amends section 30 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time slots to electors in custody. They may only vote during the time slots assigned to them.

6. Section 5 amends section 31 of the principal Regulation to empower the Chief Electoral Officer to designate dedicated polling stations and ballot paper sorting stations.

7. Section 6 amends section 33 of the principal Regulation to empower the Chief Electoral Officer to allocate dedicated polling stations to electors who will be serving a sentence of imprisonment on the polling day. To enable the Chief Electoral Officer to perform this function, new provisions (the new section 33(5) and (6) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 34 of the principal Regulation, poll cards containing information on polling are sent to electors before the poll. Section 7 amends that section to provide that poll cards sent to electors who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 37 of the principal Regulation to provide that if the same place is designated as both a polling station and a counting station, the Presiding Officer of the former shall preside at the latter.

10. Section 9 amends section 42 of the principal Regulation to require the Presiding Officer of a dedicated polling station to exhibit a notice inside the polling station to provide information of the relevant ballot paper sorting station and main counting station.

11. Section 44 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 10 amends that section

to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

12. Section 45 of the principal Regulation provides for appointment of polling agents by candidates. Section 11 amends that section to impose, for security reason, restrictions in relation to appointment of polling agents for dedicated polling stations situated in prisons. The consent of the Commissioner of Correctional Services is required.

13. Section 12 amends section 46 of the principal Regulation to require the Chief Electoral Officer to display a map or plan delineating a dedicated polling station inside the polling station.

14. Under section 47 of the principal Regulation, a polling agent may enter or be present in a polling station. Section 13 amends that section to provide, for security reason, that a polling agent may not be present in a dedicated polling station situated in a maximum security prison.

15. Section 48 of the principal Regulation imposes restrictions on communicating with electors or using a telecommunication device in a polling station but provides for an exemption for election officials. Section 14 amends that section to extend that exemption to officers of the Correctional Services Department and other law enforcement agencies on duty at dedicated polling stations.

16. Section 15 amends section 49 of the principal Regulation to provide that an elector who fails to cast his or her vote without undue delay may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

17. Section 55 of the principal Regulation provides that an elector who is suspected to have engaged in corrupt conduct by impersonation may be arrested by the police. Section 16 amends that section to provide that in a dedicated polling station, such an elector is to be removed by an officer of the Correctional

Services Department or any other law enforcement agency who is to report the case to the police.

18. Section 56A of the principal Regulation provides that an elector who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 17 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

19. To preserve secrecy during the sorting of ballot papers, section 18 amends section 57 of the principal Regulation to require electors in custody to put their ballot papers into envelopes.

20. Section 19 makes minor amendments to section 63 of the principal Regulation.

21. Section 20 amends section 63A of the principal Regulation to provide for the steps to be taken by the Presiding Officer at the close of the poll at a dedicated polling station.

#### Amendments to Part IV of the principal Regulation (counting stage)

22. The polling hours appointed for dedicated polling stations may be shorter than those appointed for other polling stations. Section 21 amends section 65 of the principal Regulation to provide that the sorting of ballot papers received from dedicated polling stations situated in prisons at ballot paper sorting stations may commence before the poll has closed at all the other polling stations.

23. Section 22 adds a new section 66A which confers on the Chief Electoral Officer a power to appoint Presiding Officers for ballot paper sorting stations.

24. Section 23 amends section 72(4) of the principal Regulation to provide that the Presiding Officer of a dedicated polling station is not to supervise a counting station.

25. Section 24 amends section 75 of the principal Regulation to extend the coverage of that section to ballot papers received from ballot paper sorting stations.

26. Section 25 adds a new section 75A to provide for the arrangements for ballot paper sorting in ballot paper sorting stations.

27. Section 26 amends section 76 of the principal Regulation to provide that before the counting of votes begins, the ballot papers received from dedicated polling stations and other polling stations must be mixed with those at the counting stations.

Amendments to Part V of the principal Regulation (disposal of document)

28. Sections 27 and 28 make minor consequential amendments to sections 83(5) and 84(3) of the principal Regulation respectively.

Amendments to Part VI of the principal Regulation (miscellaneous matters)

29. Section 29 adds a new section 88A to prohibit a person who visits an elector in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

30. Section 93 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 30 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

31. Section 31 amends section 94 of the principal Regulation to prohibit divulging the identity of an elector in custody.

32. Section 32 amends section 95 of the principal Regulation to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to inform electors in custody detained by them of a declaration of the termination of the election proceedings.

**ELECTORAL AFFAIRS COMMISSION (ELECTORAL  
PROCEDURE)(ELECTION COMMITTEE)(AMENDMENT)  
REGULATION 2009**

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**ELECTORAL AFFAIRS COMMISSION  
(ELECTORAL PROCEDURE)(ELECTION  
COMMITTEE)(AMENDMENT) REGULATION 2009**

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

**1. Commencement**

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

**2. Interpretation**

(1) Section 1(1) of the Electoral Affairs Commission (Electoral Procedure)(Election Committee) Regulation (Cap. 541 sub. leg. I) is amended, in the definition of “polling station”, by repealing everything after “designated” and substituting “as a polling station under section 28(1) and includes a dedicated polling station;”.

(2) Section 1(1) is amended by adding –

““dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 28(1A);

“in custody” (受羈押), in relation to a person, means the person is –

- (a) serving a sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means –

- (a) the Customs and Excise Department;

- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

### **3. Candidate may appoint election agent**

- (1) Section 23(15)(b) is amended by repealing “or”.
- (2) Section 23(15)(c) is amended by repealing the full stop and substituting a semicolon.
- (3) Section 23(15) is amended by adding –
  - “(d) subject to paragraph (e), be present in a dedicated polling station situated in a prison unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to his or her presence; or
  - (e) be present in a dedicated polling station situated in a maximum security prison.”.
- (4) Section 23 is amended by adding –
  - “(16) The Commissioner of Correctional Services must not give consent to an election agent under subsection (15)(d) in respect of a polling station if a polling agent has been appointed under section 42 by the same candidate for that polling station.
  - (17) Despite subsection (15)(d), the Commissioner of Correctional Services may, on an application lodged under that

subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

(a) a voter in custody or an authorized representative in custody who is entitled to vote for the relevant subsector at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and

(b) the application is lodged without undue delay after the admission or transfer.

(18) If the Commissioner of Correctional Services refuses to give consent under subsection (15)(d), the Commissioner must notify the candidate or the election agent as soon as practicable.”.

#### **4. Chief Electoral Officer to appoint polling hours and to give notice in Gazette**

(1) Section 27 is amended by repealing the heading and substituting –  
**“Appointment and notification of polling hours”**.

(2) Section 27(1) is amended by repealing “The” and substituting “Subject to subsections (2A) and (2B), the”.

(3) Section 27 is amended by adding –

“(2A) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to a voter in custody to whom the polling station is allocated under section 30.

(2B) Subject to section 55, a voter to whom a time slot is assigned under subsection (2A) may only cast his or her vote during the time slot.”.

(4) Section 27 is amended by adding –

“(3A) The Commissioner of Correctional Services must assign the time slot so as to give the voters a reasonable opportunity to vote.”.

(5) Section 27 is amended by adding –

“(4A) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all voters to whom time slots are assigned under subsection (2A) of the time slot assigned to each of them.”.

**5. Chief Electoral Officer to designate polling stations and counting stations**

(1) Section 28(1) is amended by repealing everything after “published in the” and substituting –

“Gazette –

- (a) one or more places as a polling station or polling stations for conducting a poll in respect of the election; and
- (b) one or more places as a counting station or counting stations for counting the votes.”.

(2) Section 28 is amended by adding –

“(1A) Without affecting subsection (1), the Chief Electoral Officer must designate one or more places as a dedicated polling station or dedicated polling stations at which voters in custody or authorized representatives in custody are allocated to vote.”.

**6. Chief Electoral Officer may arrange for voting for subsectors to take place at polling station and to allocate polling stations to voters and authorized representatives**

(1) Section 30 is amended by adding –

“(2A) If a voter or authorized representative will be serving a sentence of imprisonment on the polling day, the Chief Electoral Officer may allocate to the voter or authorized representative a dedicated polling station to cast the vote or votes he or she is entitled to cast at a subsector election.”.

(2) Section 30 is amended by adding –

“(5) A prescribed public officer must, on a request by the Chief Electoral Officer, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Chief Electoral Officer to perform his or her functions under this section in relation to voters and authorized representatives.

(6) In subsection (5) –

“prescribed information” (訂明資料) means –

- (a) the name of the person;
- (b) the number of the person’s identity document; and
- (c) the name and address of the premises in which the person is detained;

“prescribed public officer” (訂明公職人員) means –

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

## **7. Chief Electoral Officer to send poll cards to voters and authorized representatives**

Section 31 is amended by adding –

“(2A) A poll card sent to a voter or authorized representative who will be serving a sentence of imprisonment in a prison on the polling

day must be addressed to the voter or authorized representative and sent, as far as practicable, to the prison.”.

**8. Presiding Officer to exhibit at polling station notice providing information for guidance of voters**

Section 39(1) is amended by repealing everything after “Presiding” and substituting –

“Officer of a polling station must ensure that a notice providing information for the guidance of voters and authorized representatives in voting procedure is –

- (a) exhibited –
  - (i) if the polling station is not a dedicated polling station, outside the polling station; or
  - (ii) if the polling station is a dedicated polling station, inside the polling station; and
- (b) exhibited inside every voting compartment of the polling station.”.

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

Section 41(3) is amended by repealing everything after “be removed” and substituting –

“by –

- (a) a police officer;
- (b) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the

Correctional Services Department or any law enforcement agency.”.

**10. Candidates may appoint polling agents**

(1) Section 42 is amended by adding –

“(5A) Despite subsections (1), (3) and (5) –

- (a) subject to paragraphs (b) and (c), only one polling agent may be appointed by a candidate for a dedicated polling station situated in a prison;
- (b) no polling agent may be appointed by a candidate for a dedicated polling station situated in a prison if the Commissioner of Correctional Services has consented under section 23(15)(d) to the presence of the election agent of that candidate in that polling station;
- (c) no polling agent may be appointed for a dedicated polling station situated in a maximum security prison; and
- (d) without affecting subsection (7), the appointment of a polling agent for a dedicated polling station situated in a prison is not effective unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before polling day, the Commissioner of Correctional Services consents to the appointment.

(5B) Despite subsection (5A)(d), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before polling day, give consent under that subsection if the Commissioner is satisfied that –

- (a) a voter in custody or an authorized representative in custody who is entitled to vote for the relevant subsector at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(5C) If the Commissioner of Correctional Services refuses to give consent under subsection (5A)(d), the Commissioner must notify the candidate or the election agent of the candidate as soon as practicable.”.

(2) Section 42(6) is amended by repealing everything before paragraph (a) and substituting –

“(6) A notice appointing a polling agent for a polling station other than a dedicated polling station situated in a prison must, if it is not given under subsection (5), be delivered on the polling day to the Presiding Officer of the polling station –”.

#### **11. Chief Electoral Officer to delineate polling stations on map and display map outside polling station**

(1) Section 43 is amended, in the heading, by repealing “**outside polling station**”.

(2) Section 43(1) is amended by repealing everything after “plans.”.

(3) Section 43 is amended by adding –

“(1A) The Chief Electoral Officer must display a map or plan referred to in subsection (1) –

- (a) subject to paragraph (b), outside the polling station concerned; and
- (b) if the map or plan is prepared for a dedicated polling station, inside the polling station.”.

## **12. Who may enter or be present at polling station**

Section 44 is amended by adding –

“(6A) Subsection (6) does not apply to a dedicated polling station situated in a maximum security prison.”.

## **13. What constitutes offence at polling station**

(1) Section 45(6) is amended by adding –

- “(ga) an officer of the Correctional Services Department on duty at a dedicated polling station;
- (gb) an officer of any law enforcement agency on duty at a dedicated polling station;”.

(2) Subsection 45(6)(i) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

## **14. Presiding Officer to keep order at polling station**

(1) Section 46 is amended by adding –

“(2A) If a voter or authorized representative who is allocated to vote at a dedicated polling station fails to comply with section 54(1) and (1A), the Returning Officer or the Presiding Officer may order him or her to leave the polling station immediately.”.

(2) Section 46(3) is amended by repealing everything after “do so under” and substituting –

“subsection (2) or (2A), the person may be removed –

- (a) if the polling station concerned is not a dedicated polling station, by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (b) if the polling station concerned is a dedicated polling station, by –
  - (i) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;
  - (ii) an officer of the Correctional Services Department; or
  - (iii) an officer of any law enforcement agency.”.

(3) Section 46(5) is amended by repealing “this section” and substituting “subsection (2)”.

**15. Candidate or election agent may challenge person who has applied for ballot paper or who has voted**

(1) Section 52(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(2) Section 52(2) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (2A)”.

(3) Section 52 is amended by adding –

“(2A) The step specified for the purposes of subsections (1) and (2) is –

- (a) if the polling station is not a dedicated polling station, requesting a police officer to arrest the person concerned; or
- (b) if the polling station is a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

(4) Section 52(3) is amended by adding “pursuant to a request made” before “under subsection (2)”.

**16. Voter or authorized representative having left polling station without casting vote may return to cast vote under certain circumstances**

(1) Section 55 is amended by adding –

“(3A) Despite subsections (1), (2) and (3), a voter or authorized representative to whom a permission is granted under subsection (1) by a Presiding Officer of a dedicated polling station situated in a prison must not cast the vote unless the voter or authorized representative returns to the polling station within the time slot assigned to the voter or authorized representative under subsection (3B) or section 27(2A).

(3B) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to a voter or authorized representative under subsection (1), the Commissioner of Correctional Services must, as far as practicable –

- (a) assign to the voter or authorized representative a new time slot during the polling hours appointed for the polling station; and
- (b) notify the voter or authorized representative of the new time slot.”.

(2) Section 55(4)(b) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” before the full stop.

(3) Section 55(6) is amended by adding “or, if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency” after “police officer”.

(4) Section 55 is amended by adding –

“(6A) If a voter in custody or an authorized representative in custody leaves a dedicated polling station situated in a prison under subsection (6), the Commissioner of Correctional Services must, as far as practicable –

- (a) assign to the voter or authorized representative a new time slot during the polling hours appointed for the polling station; and
- (b) notify the voter or authorized representative of the new time slot.

(6B) The right of a voter in custody or an authorized representative in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (6) is subject to his or her returning to the polling station within the time slot assigned to him or her under subsection (6A) or section 27(2A).”.

**17. Section 87A added**

The following is added –

**“87A. Certain visitors of voters or authorized representatives in custody not to canvass for votes**

(1) If –

(a) a person (“visitor”) visits in a certain capacity a voter in custody or an authorized representative in custody for a business or official purpose; and

(b) another person who is not acting in that capacity is not allowed to visit the voter or authorized representative for that purpose,

the visitor commits an offence if he or she, during the visit, canvasses for votes for the purpose of an election.

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

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

Section 92(5) is amended by adding “, an officer of the Correctional Services Department, an officer of any law enforcement agency” after “police officer”.

**19. Enforcement of provisions as to secrecy**

(1) Section 93 is amended by adding –

“(1A) A person who divulges to any other person the identity of a voter in custody commits an offence.”.

(2) Section 93(2) is amended by repealing “Subsection (1) does” and substituting “Subsections (1) and (1A) do”.

Made this 16<sup>th</sup> day of June 2009.

The Hon. Mr. Justice  
PANG Kin-kee  
Chairman,  
Electoral Affairs Commission

Lawrence LOK Ying-kam  
Member,  
Electoral Affairs Commission

Andrew CHAN Chi-fai  
Member,  
Electoral Affairs Commission

### **Explanatory Note**

The main object of this Regulation is to amend the Electoral Affairs Commission (Electoral Procedure)(Election Committee) Regulation (Cap. 541 sub. leg. I)(“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Election Committee Subsector election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. In this Explanatory Note, a reference to a voter includes an authorized representative.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

#### Amendments to Part 1 of the principal Regulation

3. Section 2 amends section 1 of the principal Regulation to amend the definition of “polling station” and add several new definitions, including the definition of “dedicated polling station”.

#### Amendments to Part 2 of the principal Regulation (pre-polling matters)

4. Section 23 of the principal Regulation enables a candidate to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services. Such consent will not be given in respect of a polling station if a polling agent has been appointed by the same candidate for that polling station.

Amendments to Part 3 of the principal Regulation (arrangement for polling)

5. Section 4 amends section 27 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time slots to voters in custody. They may only vote in the time slots assigned to them.

6. Section 5 amends section 28 of the principal Regulation to empower the Chief Electoral Officer to designate dedicated polling stations.

7. Section 6 amends section 30 of the principal Regulation to empower the Chief Electoral Officer to allocate dedicated polling stations to voters who will be serving a sentence of imprisonment on the polling day. To enable the Chief Electoral Officer to perform this function, new provisions (the new section 30(5) and (6) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 31 of the principal Regulation, poll cards containing information on polling are sent to voters before the poll. Section 7 amends that section to provide that poll cards sent to voters who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 39 of the principal Regulation to require the Presiding Officer of a dedicated polling station to exhibit a notice inside the polling station to provide information on voting procedure.

10. Section 41 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 9 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

11. Section 42 of the principal Regulation provides for appointment of polling agents by candidates. Section 10 amends that section to impose, for security reason, restrictions in relation to appointment of polling agents for dedicated

polling stations situated in prisons. The consent of the Commissioner of Correctional Services is required.

12. Section 11 amends section 43 of the principal Regulation to require the Chief Electoral Officer to display a map or plan delineating a dedicated polling station inside the polling station.

13. Under section 44 of the principal Regulation, a polling agent may enter or stay in a polling station. Section 12 amends that section to provide, for security reason, that a polling agent may not be present in a dedicated polling station situated in a maximum security prison.

14. Section 45 of the principal Regulation imposes restrictions on communicating with voters or using a telecommunication device in a polling station but provides for an exemption for election officials. Section 13 amends that section to extend that exemption to officers of the Correctional Services Department and other law enforcement agencies on duty at dedicated polling stations.

15. Section 14 amends section 46 of the principal Regulation to provide that a voter who fails to cast his or her vote may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

16. Section 52 of the principal Regulation provides that a person who is suspected to have engaged in corrupt conduct by impersonation may be arrested by police. Section 15 amends that section to provide that in a dedicated polling station, such a person is to be removed by an officer of the Correctional Services Department or any law enforcement agency who is to report the case to the police.

17. Section 55 of the principal Regulation provides that a voter who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 16 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

Amendments to Part 6 of the principal Regulation (miscellaneous matters)

18. Section 17 adds a new section 87A to prohibit a person who visits a voter in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

19. Section 92 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 18 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

20. Section 19 amends section 93 of the principal Regulation to prohibit divulging the identity of a voter in custody.

**ELECTORAL PROCEDURE (CHIEF EXECUTIVE  
ELECTION)(AMENDMENT) REGULATION 2009**

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## **ELECTORAL PROCEDURE (CHIEF EXECUTIVE ELECTION)(AMENDMENT) REGULATION 2009**

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

### **1. Commencement**

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

### **2. Interpretation**

(1) Section 2(1) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J) is amended, in the English text, in the definition of “electoral officer”, by repealing “the Presiding” and substituting “a Presiding”.

(2) Section 2(1) is amended, in the definition of “polling station”, by repealing everything after “means” and substituting –

“–

- (a) the main polling station; or
- (b) a dedicated polling station;”.

(3) Section 2(1) is amended, in the English text, in the definition of “Presiding Officer”, by repealing “the” and substituting “a”.

(4) Section 2(1) is amended by adding –

““dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 18(1);

“in custody” (受羈押), in relation to a person, means the person is –

- (a) serving a sentence of imprisonment;

- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means –

- (a) the Customs and Excise Department;
- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“main polling station” (主投票站) means the place designated as the main polling station under section 18(1);

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

### **3. Appointment of election agent**

- (1) Section 12(3)(f) is amended by repealing “and”.
- (2) Section 12(3)(g) is amended by repealing the full stop and substituting a semicolon.
- (3) Section 12(3) is amended by adding –
  - “(h) subject to paragraph (i), being present in a dedicated polling station situated in a prison unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week before the polling date,

the Commissioner of Correctional Services consents to his presence; or

(i) be present in a dedicated polling station situated in a maximum security prison.”.

(4) Section 12 is amended by adding –

“(3A) The Commissioner of Correctional Services must not give consent to an election agent under subsection (3)(h) in respect of a polling station if a polling agent has been appointed under section 25 by the same candidate for that polling station.

(3B) Despite subsection (3)(h), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before the polling date, give consent under that subsection if he is satisfied that –

(a) an elector in custody who is entitled to vote at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and

(b) the application is lodged without undue delay after the admission or transfer.

(3C) If the Commissioner of Correctional Services refuses to give consent under subsection (3)(h), he must notify the candidate or the election agent as soon as practicable.”.

#### **4. Appointment of polling hours**

(1) Section 17(1) is amended by repealing everything before “shall be” and substituting –

“(1) Subject to subsections (8) and (9), in a contested election, the hours during which electors can vote in the first 3 rounds of voting on the polling date”.

(2) Section 17(1A) is amended by repealing everything before “shall be” and substituting –

“(1A) Subject to subsections (8) and (9), in an uncontested election, the hours during which electors can vote on the polling date”.

(3) Section 17 is amended by adding –

“(7) The Chief Electoral Officer may appoint different polling hours for different polling stations.

(8) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to an elector in custody to whom the polling station is allocated under section 18A.

(9) Subject to section 35, an elector to whom a time slot is assigned under subsection (8) may only cast his vote during the time slot.

(10) The Commissioner of Correctional Services must assign the time slot so as to give the electors a reasonable opportunity to vote.

(11) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all electors to whom time slots are assigned under subsection (8) of the time slot assigned to each of them.”.

## **5. Designation of polling station and counting station**

(1) Section 18(1)(a) is repealed and the following substituted –

“(a) a place as the main polling station for conducting a poll in respect of an election;

(aa) one or more places as a dedicated polling station or dedicated polling stations at which electors in custody are allocated to vote; and”.

(2) Section 18(3) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(3) Section 18(4) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(4) Section 18(5) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(5) Section 18(7) is amended by repealing everything after “Officer shall” and substituting –

“display the relevant map or plan referred to in subsection (6) –

- (a) in a prominent place immediately outside the main polling station;
- (b) in a prominent place inside a dedicated polling station; and
- (c) in a prominent place immediately outside the counting station.”.

## **6. Section 18A added**

The following is added –

### **“18A. Allocation of polling stations to electors in custody**

(1) The Chief Electoral Officer may allocate to an elector who will be serving a sentence of imprisonment on the polling date a dedicated polling station to cast the vote he is entitled to cast at an election.

(2) The Chief Electoral Officer may, if the circumstances require, allocate to an elector in custody an alternative polling station, in addition to or in substitution of the main polling station or the polling station allocated under subsection (1), to cast the vote he is entitled to cast at an election.

(3) A prescribed public officer must, upon a request by the Chief Electoral Officer, provide the prescribed information concerning

every person in custody who is detained by the public officer to enable the Chief Electoral Officer to perform his functions under this section in relation to electors.

(4) In subsection (3) –

“prescribed information” (訂明資料) means –

- (a) the name of the person;
- (b) the number of the person’s identity document; and
- (c) the name and address of the premises in which the person is detained;

“prescribed public officer” (訂明公職人員) means –

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

## 7. Polling notice to electors

(1) Section 19(2)(a) is repealed and the following substituted –

“(a) state the polling date and the polling hours;

(aa) also state –

- (i) subject to subparagraph (ii), the address of the main polling station;
- (ii) if it is sent to an elector who will be serving a sentence of imprisonment on the polling date, the address of the dedicated polling station allocated to him under section 18A;”.

(2) Section 19 is amended by adding –

“(2A) A polling notice sent to an elector who will be serving a sentence of imprisonment in a prison on the polling date must be addressed to the elector and sent, as far as practicable, to the prison.”.

(3) Section 19(3) is amended by repealing “address of the polling station and the polling hours” and substituting “polling hours and the addresses of the polling stations”.

(4) Section 19 is amended by adding –

“(4) If the Chief Electoral Officer allocates an alternative polling station to an elector under section 18A(2), that Officer shall, as soon as practicable, notify –

- (a) the elector;
- (b) the Returning Officer;
- (c) the Presiding Officer of the polling station previously allocated to the elector; and
- (d) the Presiding Officer of the alternative polling station.”.

#### **8. Appointment of Presiding Officer and polling officers**

(1) Section 20 is amended, in the English text, in the heading, by repealing “**Officer**” and substituting “**Officers**”.

(2) Section 20(1)(a) is amended by repealing “the” and substituting “each”.

(3) Section 20(3) is amended by adding “of a polling station” after “Officer”.

(4) Section 20(4) is amended, in the English text, by repealing “The” and substituting “A”.

#### **9. Miscellaneous arrangements relating to voting**

(1) Section 22(1) is amended by repealing “at the” and substituting “at each”.

(2) Section 22(2) is amended by repealing “to the” and substituting “to each”.

(3) Section 22(3)(a) is amended by repealing “polling station; and” and substituting “main polling station;”.

(4) Section 22(3) is amended by adding –  
 “(aa) in a prominent place inside a dedicated polling station;  
 and”.

**10. Determination of no canvassing zone and no staying zone**

(1) Section 23(1)(a) is amended, in the English text, by repealing “the” and substituting “a”.

(2) Section 23(5) is amended by repealing “near the” and substituting “near each”.

(3) Section 23(5A) is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

**11. Order in no canvassing zone and no staying zone**

Section 24(7) is amended by repealing everything after “be removed” and substituting –

“by –

- (a) a police officer;
- (b) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

## 12. Polling agents

(1) Section 25(1) is amended by repealing everything after “may” and substituting –

“appoint –

- (a) not more than 3 persons as the candidate’s polling agents for the main polling station; and
- (b) one person as the candidate’s polling agent for each dedicated polling station not situated in a maximum security prison.”.

(2) Section 25 is amended by adding –

“(1A) Despite subsection (1) –

- (a) no polling agent may be appointed by a candidate for a dedicated polling station situated in a prison if the Commissioner of Correctional Services has consented under section 12(3)(h) to the presence of the election agent of that candidate in that polling station;
- (b) no polling agent may be appointed for a dedicated polling station situated in a maximum security prison.”.

(3) Section 25(4) is amended by repealing “or the Presiding Officer”.

(4) Section 25 is amended by adding –

“(4A) Without affecting subsection (9), the appointment of a polling agent for a dedicated polling station situated in a prison is not effective unless, on an application in the specified form lodged with the Chief Electoral Officer at least one week

before the polling date, the Commissioner of Correctional Services consents to the appointment.

(4B) Despite subsection (4A), the Commissioner of Correctional Services may, on an application lodged under that subsection during the week before the polling date, give consent under that subsection if he is satisfied that –

- (a) an elector in custody who is entitled to vote at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(4C) If the Commissioner of Correctional Services refuses to give consent under subsection (4A), he must notify the candidate or his election agent as soon as practicable.”.

(5) Section 25(6) is amended by repealing everything after “polling agent” and substituting “for a polling station may be revoked by giving a notice of revocation to the Chief Electoral Officer or the Presiding Officer of the polling station.”.

### **13. Admission to polling station**

(1) Section 26(1) is amended by repealing “No person other than” and substituting “Subject to subsection (1A), only”.

(2) Section 26(1) is amended, in the English text, by repealing “stay in the” and substituting “stay in a”.

(3) Section 26 is amended by adding –

“(1A) The following provisions apply in relation to a dedicated polling station not situated in a maximum security prison –

- (a) if a candidate is present in the polling station, the election agent or the polling agent of that candidate may not be present in that polling station at the same time;
- (b) a candidate, an election agent or a polling agent may be present in the polling station subject to the availability of seats in the area designated for accommodating them;
- (c) a person referred to in paragraph (b) who wishes to enter the polling station must, on arriving at the polling station, report in person to the Presiding Officer and produce his identity card and a declaration of secrecy in the specified form completed by him.

(1B) The following provisions apply in relation to a dedicated polling station situated in a maximum security prison –

- (a) an election agent may not be present in the polling station;
- (b) a candidate who wishes to enter the polling station must, on arriving at the polling station, report in person to the Presiding Officer and produce his identity card and a declaration of secrecy in the specified form completed by him.”.

(4) Section 26(2)(a) is amended by adding “main” before “polling”.

(5) Section 26(3) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

#### 14. Order in the polling station

(1) Section 27 is amended, in the English text, in the heading, by repealing “**the**”.

(2) Section 27(1) is amended by adding “of a polling station” after “Officer”.

(3) Section 27(2) is amended, in the English text, by repealing “the polling station” and substituting “a polling station”.

(4) Section 27(3)(e) is amended, in the English text, by repealing “the” and substituting “a”.

(5) Section 27(5) is amended, in the English text, by repealing “the polling station” and substituting “a polling station”.

(6) Section 27(7) is amended, in the English text, by repealing “the polling station” and substituting “a polling station”.

(7) Section 27 is amended by adding –

“(7A) If an elector who is allocated to vote at a dedicated polling station fails to cast his vote without undue delay in accordance with section 36(1), the Returning Officer or the Presiding Officer may order him to leave the polling station immediately.”.

(8) Section 27(8) is amended by repealing “or (7)” and substituting “, (7) or (7A)”.

(9) Section 27(10) is amended by repealing everything after “fails to leave” and substituting –

“a polling station under subsection (7A) or (8), he may be removed –

- (a) in the case of the main polling station, by a police officer or by a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;  
or

- (b) in the case of a dedicated polling station, by –
  - (i) a person authorized in writing by the Returning Officer or the Presiding Officer, as may be appropriate;
  - (ii) an officer of the Correctional Services Department; or
  - (iii) an officer of any law enforcement agency.”.

**15. Challenging a person who has applied for a ballot paper or who has voted**

(1) Section 33(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(2) Section 33(3) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(3) Section 33 is amended by adding –

“(3A) The step specified for the purposes of subsections (1) and (3) is –

- (a) in the case of the main polling station, requesting a police officer to arrest the person concerned; or
- (b) in the case of a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

(4) Section 33(4)(b) is amended by adding “pursuant to a request made” before “under subsection (3)”.

**16. Elector who has not cast vote may return to cast vote with permission**

(1) Section 35 is amended by adding –

“(2A) Despite subsections (1) and (2), an elector to whom a permission is granted under subsection (1) by a Presiding Officer of a dedicated polling station situated in a prison must not cast the vote unless the elector returns to the polling station within the time slot assigned to him under subsection (2B) or section 17(8).

(2B) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to an elector under subsection (1), the Commissioner of Correctional Services must, as far as practicable –

- (a) assign to the elector a new time slot during the polling hours appointed for the polling station; and
- (b) notify the elector of the new time slot.”.

(2) Section 35(3)(b) is amended by repealing everything after “presence” and substituting –

“of –

- (i) in the case of the main polling station, a police officer;
- (ii) in the case of a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

(3) Section 35 is amended by adding –

“(5A) If an elector in custody leaves a dedicated polling station situated in a prison under subsection (5), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.

(5B) The right of an elector in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (5) is subject to his returning to the polling station within the time slot assigned to him under subsection (5A) or section 17(8).”.

(4) Section 35(6)(b) is amended by repealing everything after “presence” and substituting –

“of –

(i) in the case of the main polling station, a police officer;

(ii) in the case of a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

## **17. Voting procedure**

Section 36(2) is amended, in the English text, by repealing “the” and substituting “a”.

## **18. Steps to be taken at the polling station after the close of the poll**

(1) Section 41 is amended, in the English text, in the heading, by repealing “at the” and substituting “at a”.

(2) Section 41(1) is amended by repealing “the poll” and substituting “voting at a polling station”.

## **19. Determination and notice of time of counting of votes**

(1) Section 43(2)(a) is amended by adding “at all polling stations” after “voting”.

(2) Section 43(2)(b) is amended by adding “at all polling stations” after “voting”.

## **20. Counting of votes**

(1) Section 49 is amended by adding before subsection (1) –

“(1A) After opening all ballot boxes in accordance with section 48, the Returning Officer must –

- (a) count and record the number of ballot papers in each ballot box;
- (b) verify the ballot paper accounts received from all the polling stations by comparing them with the number of ballot papers recorded under paragraph (a) and prepare a statement in writing as to the result of the verification; and
- (c) arrange to mix the ballot papers cast at all polling stations.”.

(2) Section 49(1) is amended by repealing “in a ballot box opened in accordance with section 48 shall” and substituting “shall then”.

## **21. Verification of ballot paper account**

(1) Section 52(1)(c) is amended by repealing “account by comparing it” and substituting “accounts by comparing them”.

(2) Section 52(2) is amended, in the English text, by repealing “account” and substituting “accounts”.

(3) Section 52(3)(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

## **22. Result of counting and re-count**

Section 53(1) is amended, in the English text, by repealing “account” and substituting “accounts”.

**23. Ballot papers, accounts, packets, etc. to be sent to Chief Electoral Officer**

Section 57(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

**24. Procedure after termination of election proceedings**

(1) Section 60(2)(a) is amended by adding “of a polling station” after “Officer”.

(2) Section 60(2)(b)(ii)(C) is amended by repealing the semicolon and substituting a comma.

(3) Section 60(2)(b) is amended by adding after subparagraph (ii) –  
 “and the Commissioner of Correctional Services or the head of a law enforcement agency shall, as soon as practicable, inform all electors in custody detained by him who have not yet voted in the poll of the declaration;”.

**25. Certain officers cannot act as candidate’s agent**

Section 66 is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

**26. Employees of candidates shall not act as electoral officers**

Section 67(c) is amended, in the English text, by repealing “the” and substituting “a”.

**27. Section 67A added**

The following is added –

**“67A. Certain visitors of electors in custody not to canvass for votes**

(1) If –

- (a) a person (“visitor”) visits in a certain capacity an elector in custody for a business or official purpose; and
- (b) another person who is not acting in that capacity is not allowed to visit the elector for that purpose,

the visitor commits an offence if he, during the visit, canvasses for votes for the purpose of an election.

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

## **28. Declaration of secrecy**

(1) Section 69(1)(a) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(2) Section 69(1)(b) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(3) Section 69(2)(b) is amended by adding “main” before “polling”.

(4) Section 69(2)(c) is amended by repealing “on duty at the” and substituting “, an officer of the Correctional Services Department or an officer of any law enforcement agency on duty at a”.

(5) Section 69(2)(d) is amended by adding “main” before “polling”.

## **29. Secrecy**

(1) Section 70(1) is amended by adding –

- “(aa) subject to subsection (2), divulge to any other person the identity of an elector in custody;”.

(2) Section 70(1)(e) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(3) Section 70(1)(f) is amended, in the English text, by repealing “the polling” and substituting “a polling”.

(4) Section 70(2) is amended by adding “and (aa)” before “does”.

### **30. Reporting of irregularities**

(1) Section 79(1) is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

(2) Section 79(3) is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

Made this 16<sup>th</sup> day of June 2009.

The Hon. Mr. Justice  
PANG Kin-kee  
Chairman,  
Electoral Affairs Commission

Lawrence LOK Ying-kam  
Member,  
Electoral Affairs Commission

Andrew CHAN Chi-fai  
Member,  
Electoral Affairs Commission

### **Explanatory Note**

The main object of this Regulation is to amend the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J) (“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Chief Executive election. Besides the main polling station, polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

#### Amendments to Part 1 of the principal Regulation

3. Section 2 amends section 2 of the principal Regulation to amend several definitions and add several new definitions, including the definitions of “dedicated polling station” and “main polling station”.

#### Amendments to Part 3 of the principal Regulation (appointment of election agent)

4. Section 12 of the principal Regulation enables a candidate to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services. Such consent will not be given in respect of a polling station if a polling agent has been appointed by the same candidate for that polling station.

#### Amendments to Part 4 of the principal Regulation (arrangement for polling)

5. Section 4 amends section 17 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time

slots to electors in custody. They may only vote during the time slots assigned to them.

6. Section 5 amends section 18 of the principal Regulation to empower the Chief Electoral Officer to designate dedicated polling stations.

7. Section 6 adds a new section 18A to empower the Chief Electoral Officer to allocate dedicated polling stations to electors who will be serving a sentence of imprisonment on the polling date. To enable the Chief Electoral Officer to perform this function, new provisions (the new section 18A(3) and (4) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to provide prescribed information of persons detained by them.

8. Section 7 amends section 19 of the principal Regulation to introduce provisions concerning sending polling notices to electors who will be serving a sentence of imprisonment on the polling date.

9. Sections 8, 9 and 10 introduce minor amendments to sections 20, 22 and 23 of the principal Regulation respectively to reflect the fact that there may be more than one polling station.

10. Section 24 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 11 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

11. Section 25 of the principal Regulation provides for appointment of polling agents by candidates. Section 12 amends that section to impose, for security reason, restrictions in relation to appointment of polling agents for dedicated polling stations situated in prisons. The consent of the Commissioner of Correctional Services is required.

12. Under section 26 of the principal Regulation, an election agent may enter or stay in a polling station. Section 13 amends that section to provide, for

security reason, that an election agent may not be present in a dedicated polling station situated in a maximum security prison.

13. Section 14 amends section 27 of the principal Regulation to reflect the fact that there may be more than one polling station.

14. Section 14 also introduces a provision to provide that an elector who fails to cast his or her vote without undue delay may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

#### Amendments to Part 5 of the principal Regulation (voting)

15. Section 33 of the principal Regulation provides that an elector who is suspected to have engaged in corrupt conduct of impersonation may be arrested by the police. Section 15 amends that section to provide that in a dedicated polling station, such an elector is to be removed by an officer of the Correctional Services Department or any other law enforcement agency who is to report the case to the police.

16. Section 35 of the principal Regulation provides that an elector who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 16 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

17. Section 17 makes a minor amendment to section 36 of the principal Regulation to reflect the fact that there may be more than one polling station.

18. Section 18 amends section 41 of the principal Regulation to reflect the fact that there may be more than one polling station.

#### Amendments to Part 6 of the principal Regulation (counting stage)

19. Sections 19, 20, 21 and 22 introduce minor amendments to reflect the fact that there may be more than one polling station.

20. Section 20 also amends section 49 of the principal Regulation to provide that before the counting of votes begins, the ballot papers received from dedicated polling stations and the main polling station must be mixed together.

Amendment to Part 7 of the principal Regulation (disposal of document)

21. Section 23 makes a minor consequential amendment to section 57 of the principal Regulation.

Amendments to Part 8 of the principal Regulation (termination of election proceedings)

22. Section 24 amends section 60 of the principal Regulation to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to inform electors in custody detained by them of a declaration of the termination of the election proceedings.

Amendments to Part 9 of the principal Regulation (miscellaneous matters)

23. Sections 25 and 26 amend sections 66 and 67 of the principal Regulation respectively to reflect the fact that there may be more than one polling station.

24. Section 27 adds a new section 67A to prohibit a person who visits an elector in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

25. Section 69 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 28 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

26. Section 29 amends section 70 of the principal Regulation to prohibit divulging the identity of an elector in custody.

27. Section 30 amends section 79 of the principal Regulation to reflect the fact that there may be more than one polling station.

**ELECTORAL PROCEDURE (VILLAGE REPRESENTATIVE  
ELECTION)(AMENDMENT) REGULATION 2009**

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## **ELECTORAL PROCEDURE (VILLAGE REPRESENTATIVE ELECTION)(AMENDMENT) REGULATION 2009**

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

### **1. Commencement**

This Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission by notice published in the Gazette.

### **2. Interpretation**

(1) Section 2(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L) is amended, in the definition of “counting station”, by adding “and includes a ballot paper sorting station” after “28”.

(2) Section 2(1) is amended, in the definition of “polling station”, by adding “and includes a dedicated polling station” after “28”.

(3) Section 2(1) is amended, in the English text, in the definition of “Presiding Officer”, by repealing “the Presiding” and substituting “a Presiding”.

(4) Section 2(1) is amended, in the definition of “verification statement”, by adding “60A(c), 61(1A)(d) or” before “64(1)(d)”.

(5) Section 2(1) is amended by adding –

““ballot paper sorting station” (選票分流站) means a place designated as a ballot paper sorting station under section 28;

“counting of the votes” (點票) includes separation, sorting and counting of ballot papers;

“dedicated polling station” (專用投票站) means a place designated as a dedicated polling station under section 28;

“in custody” (受羈押), in relation to a person, means the person is –

- (a) serving a sentence of imprisonment;
- (b) detained by the Correctional Services Department on remand; or
- (c) otherwise detained by any law enforcement agency under any lawful authority;

“law enforcement agency” (執法機關) means –

- (a) the Customs and Excise Department;
- (b) the Hong Kong Police Force;
- (c) the Immigration Department;
- (d) the Independent Commission Against Corruption; or
- (e) any other department of the Government any officer of which is empowered by any Ordinance to exercise a power of arrest;

“maximum security prison” (高度設防監獄) means a prison which is specified as a maximum security prison under rule 47A(1)(b) of the Prison Rules (Cap. 234 sub. leg. A);”.

(6) Section 2(3)(b) is amended by repealing “; and” and substituting a semicolon.

(7) Section 2(3)(c) is amended by repealing the full stop and substituting “; and”.

(8) Section 2(3) is amended by adding –

“(d) a reference to the Returning Officer shall be construed, in relation to the application of the relevant provision to a ballot paper sorting station, as a reference to the Assistant

Returning Officer appointed under section 57(1A) for that ballot paper sorting station.”.

### **3. Appointment of election agent**

(1) Section 22(3)(f) is amended by repealing “and”.

(2) Section 22(3)(g) is amended by repealing the full stop and substituting a semicolon.

(3) Section 22(3) is amended by adding –

“(h) subject to paragraph (i), being present at a dedicated polling station situated in a prison unless, upon an application in the specified form lodged with the Director of Home Affairs at least one week before polling day, the Commissioner of Correctional Services consents to his presence; and

(i) being present in a dedicated polling station situated in a maximum security prison.”.

(4) Section 22 is amended by adding –

“(3A) The Commissioner of Correctional Services must not give consent under subsection (3)(h) if he has given consent under section 37(1A) to a polling agent of the same candidate.

(3B) Despite subsection (3)(h), the Commissioner of Correctional Services may, upon an application lodged under that subsection during the week before polling day, give consent under that subsection if he is satisfied that –

(a) an elector in custody who is entitled to vote at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and

(b) the application is lodged without undue delay after the admission or transfer.

(3C) If the Commissioner of Correctional Services refuses to give consent under subsection (3)(h), he must notify the candidate or the election agent as soon as practicable.”.

#### **4. Appointment of polling hours**

(1) Section 27 is amended by adding –

“(1A) The Director of Home Affairs may appoint different polling hours for different Villages and for different polling stations.

(1B) The Commissioner of Correctional Services may assign a time slot during the polling hours appointed for a dedicated polling station situated in a prison to an elector in custody to whom the polling station is allocated under section 28A.

(1C) Subject to section 46, an elector to whom a time slot is assigned under subsection (1B) may only cast his vote during the time slot.

(1D) The Commissioner of Correctional Services must, as early as practicable before the commencement of the poll, notify all electors to whom time slots are assigned under subsection (1B) of the time slot assigned to each of them.”.

(2) Section 27 is amended by adding –

“(2A) The Commissioner of Correctional Services must assign the time slot so as to give the electors a reasonable opportunity to vote.”.

#### **5. Designation of polling stations and counting stations**

(1) Section 28 is amended, in the heading, by repealing “**and counting**” and substituting “, **ballot paper sorting stations and counting**”.

(2) Section 28(1) is amended by repealing everything after “published in the” and substituting –

“Gazette –

- (a) one or more places as a polling station or polling stations for conducting the poll for a Village;
- (b) one or more places as a dedicated polling station or dedicated polling stations at which electors in custody are allocated to vote in the poll for a Village;
- (c) one or more places as a ballot paper sorting station or ballot paper sorting stations for sorting ballot papers received from dedicated polling stations in the poll for a Village; and
- (d) one or more places as a counting station or counting stations for counting the votes cast at the polling station or polling stations used in the poll for a Village.”.

(3) Section 28(2)(b) is amended by adding “, whether or not” after “premises”.

(4) Section 28(7) is amended by repealing everything after “Affairs shall” and substituting –

“display the relevant map or plan referred to in subsection (6) –

- (a) if the relevant polling station is not a dedicated polling station, in a prominent place immediately outside the polling station;

- (b) if the relevant polling station is a dedicated polling station, in a prominent place inside the polling station; and
- (c) in a prominent place immediately outside the relevant counting station.”.

## 6. Section 28A added

The following is added –

### “28A. Allocation of polling stations to electors in custody

(1) The Director of Home Affairs may allocate to each elector in custody a dedicated polling station to cast the vote he is entitled to cast at an election.

(2) A prescribed public officer must, upon a request by the Director of Home Affairs, provide the prescribed information concerning every person in custody who is detained by the public officer to enable the Director of Home Affairs to perform his functions under this section in relation to electors.

(3) In subsection (2) –

“prescribed information” (訂明資料) means –

- (a) the name of the person;
- (b) the number of the person’s identity document;
- (c) the name and address of the premises in which the person is detained; and
- (d) the date of birth of the person;

“prescribed public officer” (訂明公職人員) means –

- (a) the Commissioner of Correctional Services; or
- (b) the head of any law enforcement agency.”.

**7. Director of Home Affairs to send polling notices to electors**

Section 29 is amended by adding –

“(2A) A polling notice sent to an elector who will be serving a sentence of imprisonment in a prison on the polling day must be addressed to the elector and sent, as far as practicable, to the prison.”.

**8. Miscellaneous arrangements relating to voting**

(1) Section 33(5)(a) is amended by repealing “the polling station; and” and substituting “a polling station which is not a dedicated polling station;”.

(2) Section 33(5) is amended by adding –

“(aa) in a prominent place inside a dedicated polling station; and”.

**9. Determination of no canvassing zone and no staying zone**

Section 34(6) is amended by repealing “near the” and substituting “near each”.

**10. Order at no canvassing zone and no staying zone**

Section 35(8) is amended by repealing everything after “be removed” and substituting –

“by –

- (a) a police officer;
- (b) a person authorized in writing by the Returning Officer who ordered him to leave or the Presiding Officer, as may be appropriate; or
- (c) if the no canvassing zone or the no staying zone, as may be appropriate, is determined in relation to a dedicated polling station, an officer of the

Correctional Services Department or any law enforcement agency.”.

### **11. Admission to polling station**

(1) Section 37(1)(j) is amended by repealing “(3), (4), (5)” and substituting “(1A), (3), (4), (5), (6A), (6B)”.

(2) Section 37(1)(k) is amended by repealing “(3), (4), (6)” and substituting “(1A), (3), (4), (6), (6A), (6B)”.

(3) Section 37 is amended by adding –

“(1A) A polling agent may not be present in a dedicated polling station situated in a prison unless, upon an application in the specified form lodged with the Director of Home Affairs at least one week before polling day, the Commissioner of Correctional Services consents to his presence.

(1B) The Commissioner of Correctional Services must not give consent under subsection (1A) if he has given consent under section 22(3)(h) to the election agent of the same candidate.

(1C) Despite subsection (1A), the Commissioner of Correctional Services may, upon an application lodged under that subsection during the week before polling day, give consent under that subsection if he is satisfied that –

- (a) an elector in custody who is entitled to vote at a dedicated polling station situated in a prison is admitted or transferred to the prison during that week; and
- (b) the application is lodged without undue delay after the admission or transfer.

(1D) If the Commissioner of Correctional Services refuses to give consent under subsection (1A), the Commissioner

must notify the candidate or the election agent of the candidate as soon as practicable.”.

(4) Section 37 is amended by adding –

“(6A) If a candidate is present in a dedicated polling station, the election agent or the polling agent of that candidate may not be present in the polling station at the same time.

(6B) No election agent or polling agent may be present in a dedicated polling station situated in a maximum security prison.”.

## **12. Order at polling station**

(1) Section 38(2) is amended by adding “appointed for it” before “contrary”.

(2) Section 38(3)(f) is amended, in the English text, by repealing “the Presiding” and substituting “a Presiding”.

(3) Section 38 is amended by adding –

“(9A) If an elector who is allocated to vote at a dedicated polling station fails to cast his vote without undue delay in accordance with section 47(1), the Returning Officer or the Presiding Officer may order him to leave the polling station immediately.”.

(4) Section 38(10) is amended by repealing everything after “subsection” and substituting –

“(8) or (9A), the person may be removed –

(a) if the polling station is not a dedicated polling station, by a police officer or by a person authorized in writing by the Returning Officer who ordered the person to leave or the Presiding Officer, as may be appropriate; or

- (b) if the polling station is a dedicated polling station, by –
  - (i) a person authorized in writing by the Returning Officer who ordered the person to leave or the Presiding Officer, as may be appropriate;
  - (ii) an officer of the Correctional Services Department; or
  - (iii) an officer of any law enforcement agency.”.

**13. Challenging a person who has applied for a ballot paper or who has voted**

(1) Section 44(1) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(2) Section 44(3) is amended by repealing “request a police officer to arrest that person” and substituting “take the step specified in subsection (3A)”.

(3) Section 44 is amended by adding –

“(3A) The step specified for the purposes of subsections (1) and (3) is –

- (a) if the polling station is not a dedicated polling station, requesting a police officer to arrest the person concerned; or
- (b) if the polling station is a dedicated polling station, requesting an officer of the Correctional Services Department or any law enforcement agency to remove the person concerned from the polling station and report the case to the police.”.

(4) Section 44(4)(b) is amended by adding “pursuant to a request made” before “under subsection (3)”.

**14. Elector who has not cast vote may return to cast vote with permission**

(1) Section 46 is amended by adding –

“(2A) Despite subsections (1) and (2), an elector to whom a permission is granted under subsection (1) by a Presiding Officer of a dedicated polling station situated in a prison must not cast the vote unless the elector returns to the polling station within the time slot assigned to him under subsection (2B) or section 27(1B).

(2B) If the Presiding Officer of a dedicated polling station situated in a prison grants the permission to an elector under subsection (1), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.”.

(2) Section 46(3)(b) is amended by repealing everything after “presence” and substituting –

“of –

(i) if the polling station is not a dedicated polling station, a police officer; or

(ii) if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

(3) Section 46 is amended by adding –

“(5A) If an elector in custody leaves a dedicated polling station situated in a prison under subsection (5), the Commissioner of Correctional Services must, as far as practicable –

(a) assign to the elector a new time slot during the polling hours appointed for the polling station; and

(b) notify the elector of the new time slot.

(5B) The right of an elector in custody who is allocated to vote at a dedicated polling station situated in a prison to cast the vote under subsection (5) is subject to his returning to the dedicated polling station within the time slot assigned to him under subsection (5A) or section 27(1B).”.

(4) Section 46(6)(b) is amended by repealing everything after “presence” and substituting –

“of –

(i) if the polling station is not a dedicated polling station, a police officer; or

(ii) if the polling station is a dedicated polling station, an officer of the Correctional Services Department or any law enforcement agency.”.

## **15. Voting procedure**

(1) Section 47(1) is amended by adding “subsection (1A) and” after “Subject to”.

(2) Section 47 is amended by adding –

“(1A) If an elector is an elector in custody and he casts the vote at a dedicated polling station in which the poll for two or more Villages is conducted –

(a) he must –

- (i) if issued with a ballot paper, put it into the envelope issued to him together with the ballot paper;
- (ii) if issued with two or more ballot papers, put each of them separately into the envelope issued in relation to the relevant Village to him together with the ballot paper,

before leaving the compartment; and

- (b) the references to ballot paper or ballot papers in subsection (1)(d) and (f) have effect in relation to him as if they are references to ballot paper or ballot papers contained in the envelope or envelopes, as the case may be.”.

**16. Steps to be taken at a polling station after the close of the poll**

(1) Section 53(2) is amended by adding “of a polling station which is not a dedicated polling station” after “Presiding Officer”.

(2) Section 53 is amended by adding –

“(3) As soon as practicable after complying with subsection (1), the Presiding Officer of a dedicated polling station shall deliver –

- (a) the sealed ballot box or boxes;
- (b) the sealed packets referred to in subsection (1)(b); and
- (c) the ballot paper account or accounts,

in accordance with subsection (4).

- (4) The items specified in subsection (3) must be delivered –
- (a) if the poll is conducted for two or more Villages, to the Assistant Returning Officer of the ballot paper sorting station; or
  - (b) if the poll is conducted for one Village, to the Returning Officer of the relevant counting station.”.

**17. Determination and notice of time of counting of votes**

(1) Section 55(1) is amended by adding “or, in the case of a ballot paper sorting station, the Assistant Returning Officer” after “Officer”.

(2) Section 55(2) is amended by repealing everything after “subsection” and substituting –

“(1) –

- (a) by the Returning Officer shall be a time after the close of the poll for the Village concerned;
- (b) by the Assistant Returning Officer shall be a time after the close of the poll for the Village concerned at all dedicated polling stations situated in prisons at which polling for the Village concerned was conducted; and
- (c) may be a time before the poll has closed at all the other polling stations at which polling for the Village concerned is conducted.”.

**18. Appointment of counting officers**

Section 57 is amended by adding before subsection (1) –

“(1A) The Electoral Affairs Commission may appoint an Assistant Returning Officer to preside at a ballot paper sorting station.”.

**19. Opening a ballot box**

Section 60(1) is amended by repealing “53(2)” and substituting “53”.

**20. Section 60A added**

The following is added –

**“60A. Arrangements for sorting in ballot paper sorting stations**

After opening the ballot boxes under section 60, the Assistant Returning Officer presiding at the ballot paper sorting station must –

- (a) count and record the number of envelopes in each ballot box;
- (b) verify the ballot paper account by comparing it with the number of envelopes recorded under paragraph (a);
- (c) prepare a statement in writing as to the result of the verification;
- (d) sort the envelopes according to each Village;
- (e) prepare a statement in writing as to the number of envelopes containing ballot papers recorded for each Village under paragraph (d);
- (f) make into separate bundles the sorted envelopes together with the relevant statement prepared under paragraph (e);

- (g) place each bundle into a separate receptacle and seal it in the presence of those present at the counting zone; and
- (h) arrange the receptacles to be delivered to the Returning Officers of the respective counting stations.”.

## **21. Counting of votes**

- (1) Section 61 is amended by adding before subsection (1) –

“(1A) After opening all ballot boxes in accordance with section 60, the Returning Officer must –

- (a) open the envelopes containing ballot papers received from the ballot paper sorting station;
- (b) count and record the number of ballot papers in each ballot box under his charge;
- (c) verify the ballot paper accounts received from all the polling stations by comparing them with the number of ballot papers recorded under paragraph (b);
- (d) prepare a statement in writing as to the result of the verification; and
- (e) arrange to mix the ballot papers cast at all polling stations.”.

- (2) Section 61(1) is amended by repealing “in a ballot box opened in accordance with section 60 shall” and substituting “shall then”.

## **22. Verification of ballot paper account**

(1) Section 64(2) is amended, in the English text, by repealing “account” and substituting “accounts”.

(2) Section 64(3)(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

## **23. Result of counting and re-count**

Section 65(1) is amended, in the English text, by repealing “account is” and substituting “accounts are”.

## **24. Ballot papers, accounts, packets, etc. to be sent to Director of Home Affairs**

Section 69(a) is amended, in the English text, by repealing “account” and substituting “accounts”.

## **25. Section 79A added**

The following is added –

### **“79A. Certain visitors of electors in custody not to canvass for votes**

If –

- (a) a person (“visitor”) visits in a certain capacity an elector in custody for a business or official purpose; and
- (b) another person who is not acting in that capacity is not allowed to visit the elector for that purpose,

the visitor commits an offence if he, during the visit, canvasses for votes for the purpose of an election.”.

## **26. Declaration of secrecy**

Section 81(2)(c) is amended by adding “, an officer of the Correctional Services Department or an officer of any law enforcement agency” after “officer”.

**27. Secrecy**

- (1) Section 82(1) is amended by adding –  
“(aa) subject to subsection (2), divulge to any other person the identity of an elector in custody;”.
- (2) Section 82(2) is amended by adding “or (aa)” before “does”.

**28. Offence**

Section 89(1) is amended by adding “, 79A” after “79”.

Made this 16<sup>th</sup> day of June 2009.

The Hon. Mr. Justice  
PANG Kin-kee  
Chairman,  
Electoral Affairs Commission

Lawrence LOK Ying-kam  
Member,  
Electoral Affairs Commission

Andrew CHAN Chi-fai  
Member,  
Electoral Affairs Commission

### **Explanatory Note**

The main object of this Regulation is to amend the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L)(“the principal Regulation”) to make provision for voting by imprisoned persons and persons otherwise detained under lawful authority in Village Representative election. Polling stations to be called “dedicated polling stations” will be set up in prisons or other suitable places such as police stations. Ballot papers cast at dedicated polling stations in an election conducted for two or more Villages will be sorted at ballot paper sorting stations before they are sent to counting stations for counting.

2. Section 1 empowers the Chairman of the Electoral Affairs Commission to appoint the commencement date of this Regulation.

#### Amendments to Part 1 of the principal Regulation

3. Section 2 amends section 2 of the principal Regulation to amend several definitions and add several new definitions, including the definitions of “ballot paper sorting station” and “dedicated polling station”.

#### Amendments to Part 3 of the principal Regulation (election agent)

4. Section 22 of the principal Regulation enables a candidate to appoint an election agent. Section 3 introduces amendments to provide that an election agent may not enter a polling station situated in a maximum security prison. An election agent’s presence in polling stations situated in other prisons is subject to the consent of the Commissioner of Correctional Services.

#### Amendments to Part 4 of the principal Regulation (arrangement for polling)

5. Section 4 amends section 27 of the principal Regulation to empower, for operational reason, the Commissioner of Correctional Services to assign time

slots to electors in custody. They may only vote during the time slots assigned to them.

6. Section 5 amends section 28 of the principal Regulation to empower the Director of Home Affairs to designate dedicated polling stations and ballot paper sorting stations.

7. Section 6 adds a new section 28A to empower the Director of Home Affairs to allocate dedicated polling stations to electors who will be serving a sentence of imprisonment on the polling day. To enable the Director of Home Affairs to perform this function, new provisions (the new section 28A(2) and (3) of the principal Regulation) are introduced to require the Commissioner of Correctional Services and the heads of other law enforcement agencies to provide prescribed information of persons detained by them.

8. Under section 29 of the principal Regulation, polling notices containing information on polling are sent to electors before the poll. Section 7 amends that section to provide that polling notices sent to electors who will be serving a sentence of imprisonment are to be sent to the prisons.

9. Section 8 amends section 33 of the principal Regulation to require the Presiding Officer of a dedicated polling station to display a notice inside the polling station to provide information on voting procedure.

10. Section 9 amends section 34 of the principal Regulation to reflect the fact that there may be more than one polling station.

11. Section 35 of the principal Regulation empowers police officers to assist Returning Officers or Presiding Officers to keep order in no canvassing zones and no staying zones outside polling stations. Section 10 amends that section to extend that power to officers of the Correctional Services Department and other law enforcement agencies.

12. Section 37 of the principal Regulation provides for admission to polling stations. Section 11 amends that section to impose, for security reason, restrictions in relation to the presence of polling agents and election agents in

dedicated polling stations situated in prisons. For a polling agent, the consent of the Commissioner of Correctional Services is required.

13. Section 12 amends section 38 of the principal Regulation to provide that an elector who fails to cast his vote without undue delay may be removed from the dedicated polling station. The power of removal is also conferred on officers of the Correctional Services Department or other law enforcement agencies.

Amendments to Part 5 of the principal Regulation (voting)

14. Section 44 of the principal Regulation provides that a person who is suspected to have engaged in corrupt conduct of impersonation may be arrested by the police. Section 13 amends that section to provide that in a dedicated polling station, such a person is to be removed by an officer of the Correctional Services Department or any law enforcement agency who is to report the case to the police.

15. Section 46 of the principal Regulation provides that an elector who has been issued with a ballot paper may, under certain circumstances, leave the polling station and return to the polling station to cast the vote later. Section 14 amends that section to make provision for the arrangements as regards a dedicated polling station situated in a prison.

16. Section 15 amends section 47 of the principal Regulation to provide for the voting procedure as regards dedicated polling stations.

17. Section 16 amends section 53 of the principal Regulation to provide for the steps to be taken by the Presiding Officer at the close of the poll at a dedicated polling station.

Amendments to Part 6 of the principal Regulation (counting stage)

18. The polling hours appointed for dedicated polling stations may be shorter than those appointed for other polling stations. Section 17 amends section 55 of the principal Regulation to provide that the sorting of ballot papers received

from dedicated polling stations situated in prisons at ballot paper sorting stations may commence before the poll has closed at all the other polling stations.

19. Section 18 amends section 57 of the principal Regulation to confer on the Electoral Affairs Commission a power to appoint Assistant Returning Officers to preside at ballot paper sorting stations.

20. Section 19 makes a minor amendment to section 60 of the principal Regulation.

21. Section 20 adds a new section 60A to provide for the arrangements for ballot paper sorting in ballot paper sorting stations.

22. Section 21 amends section 61 of the principal Regulation to provide that before the counting of votes begins, the ballot papers received from dedicated polling stations and other polling stations must be mixed with those at the counting stations.

23. Sections 22 and 23 make minor consequential amendments to sections 64 and 65 of the principal Regulation respectively.

#### Amendment to Part 7 of the principal Regulation (disposal of document)

24. Section 24 makes a minor consequential amendment to section 69 of the principal Regulation.

#### Amendments to Part 9 of the principal Regulation (miscellaneous matters)

25. Section 25 adds a new section 79A to prohibit a person who visits an elector in custody in a business or official capacity (for example, as a justice of the peace, social worker or solicitor) from canvassing for votes during the visit.

26. Section 81 of the principal Regulation requires certain persons to make a declaration of secrecy before entering a polling station or a counting station. Section 26 amends that section to exempt officers of the Correctional Services Department or other law enforcement agencies on duty at a polling station from that requirement.

27. Section 27 amends section 82 of the principal Regulation to prohibit divulging the identity of an elector in custody.

28. Section 28 amends section 89 of the principal Regulation to make contravention of the new section 79A an offence.