

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION
OF ELECTORS)(LEGISLATIVE COUNCIL
GEOGRAPHICAL CONSTITUENCIES)(DISTRICT
COUNCIL CONSTITUENCIES)(AMENDMENT)
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION)
(ELECTORS FOR LEGISLATIVE COUNCIL
FUNCTIONAL CONSTITUENCIES)(VOTERS FOR
ELECTION COMMITTEE SUBSECTORS)(MEMBERS
OF ELECTION COMMITTEE)(AMENDMENT)
REGULATION 2009**

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION
OF ELECTORS)(VILLAGE REPRESENTATIVE
ELECTION)(AMENDMENT) REGULATION 2009**

INTRODUCTION

On 26 June 2009, the Electoral Affairs Commission (“EAC”) made three Amendment Regulations on registration of electors at **Annexes A to C** which are aimed at tying in the Regulations concerned with the provisions in the Voting by Imprisoned Persons Ordinance (“VIPO”) and to provide for the related practical arrangements. This brief informs Members of the main provisions of the Amendment Regulations.

BACKGROUND

2. The VIPO was passed by the Legislative Council on 24 June 2009. Among other things, the Ordinance will remove the relevant provisions under the Legislative Council Ordinance (“LCO”) (Cap. 542) and the Village Representative Election Ordinance (Cap. 576), which disqualify prisoners and persons who have been convicted of certain election related or bribery offences from registering as electors.

3. The VIPO will also amend section 28 of the LCO to provide for the following arrangement by which an eligible prisoner can be registered as an elector -

- (a) for prisoners who maintain a home in Hong Kong outside the prison, they can apply to be registered as electors to their home address, as in the case of non-prisoners;
- (b) for prisoners who do not maintain a home in Hong Kong, they can apply to be registered to their last dwelling place in Hong Kong, but they will be required to provide proof on such an address; and
- (c) for prisoners who do not maintain a home in Hong Kong and who cannot provide any proof on their last dwelling place in Hong Kong, they can apply to be registered to the residential address last recorded by the Immigration Department under the Registration of Persons Regulations (Cap. 177A) as a last resort.

4. The Administration plans to bring the provisions in paragraph 3 above into operation on 3 July 2009.

AMENDMENT REGULATIONS

5. Upon the enactment of the VIPO, it is necessary to make consequential amendments to the following EAC Regulations to tie them in with the provisions in the VIPO and to provide for the related practical

arrangements -

- (a) the EAC (Registration of Electors)(Legislative Council Geographical Constituencies)(District Council Constituencies) Regulation (Cap. 541A);
- (b) the EAC (Registration)(Electors for Legislative Council Functional Constituencies)(Voters for Election Committee Subsectors)(Members of Election Committee) Regulation (Cap. 541B); and
- (c) the EAC (Registration of Electors)(Village Representative Election) Regulation (Cap. 541K).

The major amendments are highlighted in the following paragraphs.

Definition of “principal residential address”

6. The Amendment Regulations would amend the definition of “principal residential address” in section 2 of Cap. 541A and Cap. 541B so that it can be extended to cover any of the three addresses (as set out in paragraph 3 above) under the amended section 28 of the LCO.

Preparation of Omissions List

7. The Amendment Regulations would amend section 9 of Cap. 541A, so that if a prisoner-electoral is registered to his last dwelling-place in Hong Kong or the address last recorded under the Registration of Persons Regulations and the elector concerned has left the prison without reporting his new residential address to the Electoral Registration Officer (“ERO”), the ERO is empowered to enter the name and address of that elector on the geographical constituencies omissions list. The usual procedure for the ERO to make written inquiry with the elector concerned on his registered address is unnecessary and skipped, since the registered address for such cases is a “deemed” address. Making inquiries in accordance with the “deemed” address will also cause unnecessary disturbance to the prevailing tenants of the address concerned, without being able to serve any practical purposes.

Inspection of Omissions List

8. The Amendment Regulations would amend section 25 of Cap. 541B to enable the ERO to make available for inspection, a copy of a specific part of the functional constituencies omissions list, the subsector omissions list or the Election Committee omissions list at an additional place, if that Officer considers it appropriate to do so. The ERO may determine the period during which and the times at which it may be so inspected. The provision is to facilitate the ERO to cater for requests for inspection from prisoners or persons held in custody¹.

Submission of Objection or Claim for Registration

9. At present, a person who wants to make an objection to the registration of another person or a claim for his own registration in the final register is required to deliver a notice of objection / claim in person at the Office of the ERO by the respective statutory deadlines. The Amendment Regulations would amend the relevant provisions² to allow a prisoner or a person held in custody to deliver a notice of objection / claim by post to the office of the ERO by the same statutory deadline, so that he will not be deprived of the opportunity to make an objection or claim.

PUBLIC CONSULTATION

10. On 18 May 2009, we briefed the LegCo Panel on Constitutional Affairs on the proposed practical arrangements covered by the Amendment Regulations. Members did not raise any objection.

IMPLICATIONS OF THE AMENDMENT REGULATIONS

11. The practical arrangements provided under the Amendment Regulations will be implemented mainly by the Registration and Electoral

¹ The ERO already has the power to arrange for inspection at an additional place, if he considers it appropriate to do so, in respect of the geographical constituencies omissions list, and the various provisional registers and final registers.

² The relevant provisions amended are sections 14 and 15 of Cap. 541A, sections 30 and 31 of Cap. 541B and sections 23 and 25 of Cap. 541K.

Office³, the Home Affairs Department⁴ and the Correctional Services Department. Subject to further assessment, these departments will require additional resources to cope with the additional workload. They will try to absorb the additional resource requirements as far as possible, and seek additional resources required in accordance with the established mechanism.

12. 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

13. The Amendment Regulations will be published in the Gazette on 3 July 2009 and tabled in the Council on 8 July 2009.

PUBLICITY

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

ENQUIRIES

15. For enquiries about this brief, please contact Mr Eddie NG, Deputy Chief Electoral Officer (Operations) of the Registration and Electoral Office, at 2827 7047.

Registration and Electoral Office
2 July 2009

³ In respect of the registration of electors for Legislative Council, District Council and Election Committee Subsector elections.

⁴ In respect of the registration of electors for the VR election.

ELECTORAL AFFAIRS COMMISSION (REGISTRATION OF ELECTORS)(LEGISLATIVE COUNCIL GEOGRAPHICAL CONSTITUENCIES)(DISTRICT COUNCIL CONSTITUENCIES)(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

Section 2(1) of the Electoral Affairs Commission (Registration of Electors)(Legislative Council Geographical Constituencies)(District Council Constituencies) Regulation (Cap. 541 sub. leg. A) is amended, in the definition of “principal residential address”, by repealing “section 28(3)” and substituting “section 28(1B) or (3)”.

3. Electoral Registration Officer to prepare an omissions list

Section 9 is amended by adding –

“(2A) Despite subsection (1), if –

- (a) the Electoral Registration Officer is satisfied on reasonable grounds that –
 - (i) a person has served a sentence of imprisonment in Hong Kong;
 - (ii) the person used, under section 28(1B) of the Legislative Council Ordinance (Cap. 542), an address for the purpose of registration; and
 - (iii) the imprisonment has terminated; and

- (b) that Officer is not notified of the person's new residential address,

that Officer must enter the name and the principal residential address on the omissions list without making an inquiry under section 7 in respect of the person.”.

4. Person may object to registration of registered person in the provisional register

Section 14 is amended by adding –

“(2A) If the objector is in custody within the meaning of section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D), a notice sent by post by the objector is deemed, for the purposes of subsection (2)(c), to be a notice delivered by the objector in person.”.

5. Who may lodge a notice of claim

Section 15 is amended by adding –

“(7A) If the claimant is in custody within the meaning of section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D), a notice sent by post by the claimant is deemed, for the purposes of subsection (7), to be a notice delivered by the claimant in person.”.

Made this 26th 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 object of this Regulation is to amend the Electoral Affairs Commission (Registration of Electors)(Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541 sub. leg. A) (“the principal Regulation”) to provide for matters relating to registration of persons serving a sentence of imprisonment or otherwise detained under any lawful authority as electors for Legislative Council geographical constituencies and District Council constituencies. Under section 1, this Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission.

2. Section 2 makes a minor amendment to the definition of “principal residential address” in section 2(1) of the principal Regulation. The amendment is consequential upon a recent amendment to section 28 of the Legislative Council Ordinance (Cap. 542).

3. Section 9 of the principal Regulation provides that the name and principal residential address of a registered elector may be entered on an omissions list under certain circumstances. Section 3 amends that section to provide for the application of that requirement to imprisoned persons who use an address under section 28(1B) of the Legislative Council Ordinance (Cap. 542) for the purpose of registration as electors.

4. Section 14 of the principal Regulation allows a person to make, under certain circumstances, an objection to another person’s registration in the final register of electors by means of lodging a notice of objection in person. Section 4 amends that section to provide that an imprisoned person or a person detained under any lawful authority may send a notice of objection by post.

5. Section 15 of the principal Regulation allows a person to object to certain decisions of the Electoral Registration Officer by making a claim by means of lodging a notice of claim in person. Section 5 amends that section to provide

that an imprisoned person or a person detained under any lawful authority may send a notice of claim by post.

**ELECTORAL AFFAIRS COMMISSION (REGISTRATION)
(ELECTORS FOR LEGISLATIVE COUNCIL FUNCTIONAL
CONSTITUENCIES)(VOTERS FOR ELECTION
COMMITTEE SUBSECTORS)(MEMBERS OF 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

Section 2(1) of the Electoral Affairs Commission (Registration)(Electors for Legislative Council Functional Constituencies)(Voters for Election Committee Subsectors)(Members of Election Committee) Regulation (Cap. 541 sub. leg. B) is amended, in the definition of “principal residential address”, by repealing everything after “to a” and substituting “person, means the address of the only or principal residence (within the meaning of section 28(1B) or (3) of the Legislative Council Ordinance (Cap. 542)) of that person;”.

3. Electoral Registration Officer to publish a notice that omissions list is available for public inspection

Section 25 is amended by adding –

“(4) Without affecting subsection (1), the Electoral Registration Officer may, if he or she considers it appropriate to do so, make a copy of a specific part of the functional constituencies omissions list, the subsector omissions list or the Election Committee omissions list available for inspection by members of the public, free of charge.

(5) The Electoral Registration Officer may determine –

(a) the period during which; and

(b) the times and the place at which,
the copy may be inspected under subsection (4).

(6) The Electoral Registration Officer may require a person who wishes to inspect an omissions list or a copy under subsection (1) or (4) to –

- (a) produce to that Officer the identity document of the person; and
- (b) complete a form furnished by that Officer.”.

4. Person may object to registration of registered person in the register

Section 30 is amended by adding –

“(2A) If the objector is in custody within the meaning of section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D), a notice sent by post by the objector is deemed, for the purposes of subsection (2)(c), to be a notice delivered by the objector in person.”.

5. Who may lodge a notice of claim

Section 31 is amended by adding –

“(8A) If the claimant is in custody within the meaning of section 2(1) of the Electoral Affairs Commission (Electoral Procedure)(Legislative Council) Regulation (Cap. 541 sub. leg. D), a notice sent by post by the claimant is deemed, for the purposes of subsection (8), to be a notice delivered by the claimant in person.”.

Made this 26th 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 (Registration)(Electors for Legislative Council Functional Constituencies)(Voters for Election Committee Subsectors)(Members of Election Committee) Regulation (Cap. 541 sub. leg. B)(“the principal Regulation”) to provide for matters relating –

- (a) to registration of persons serving a sentence of imprisonment or otherwise detained under any lawful authority as electors and voters for Legislative Council functional constituencies and Election Committee subsectors; and
- (b) to registration of such persons in the Election Committee register.

Under section 1, this Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission.

2. Section 2 makes a minor amendment to the definition of “principal residential address” in section 2(1) of the principal Regulation. The amendment is consequential upon a recent amendment to section 28 of the Legislative Council Ordinance (Cap. 542).

3. Section 25 of the principal Regulation requires the Electoral Registration Officer to publish a notice concerning an omissions list containing the personal particulars of persons who are no longer eligible to have their names included in the relevant registers. Section 3 amends that section to provide for public inspection of a copy of a specific part of the relevant omissions lists.

4. Section 30 of the principal Regulation allows a person to make, under certain circumstances, an objection to another person’s registration in the relevant final register by means of lodging a notice of objection in person. Section 4 amends that section to provide that an imprisoned person or a person detained under any lawful authority may send a notice of objection by post.

5. Section 31 of the principal Regulation allows a person to object to certain decisions of the Electoral Registration Officer by making a claim by means of lodging a notice of claim in person. Section 5 amends that section to provide that an imprisoned person or a person detained under any lawful authority may send a notice of claim by post.

**ELECTORAL AFFAIRS COMMISSION
(REGISTRATION OF ELECTORS)(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. Objection regarding registered person in provisional register

Section 23 of the Electoral Affairs Commission (Registration of Electors)(Village Representative Election) Regulation (Cap. 541 sub. leg. K) is amended by adding –

“(2A) If the objector is in custody within the meaning of section 2(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L), a notice sent by post by the objector is deemed, for the purposes of subsection (2)(c), to be a notice delivered by the objector in person.”.

3. How to lodge notice of claim

Section 25 is amended by adding –

“(3A) If the claimant is in custody within the meaning of section 2(1) of the Electoral Procedure (Village Representative Election) Regulation (Cap. 541 sub. leg. L), a notice sent by post by the claimant is deemed, for the purposes of subsection (3)(a), to be a notice delivered by the claimant in person.”.

Made this 26th 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 object of this Regulation is to introduce two amendments that are consequential upon the enactment of the Voting by Imprisoned Persons Ordinance (7 of 2009). Under section 1, this Regulation comes into operation on a day to be appointed by the Chairman of the Electoral Affairs Commission.

2. Section 23 of the Electoral Affairs Commission (Registration of Electors)(Village Representative Election) Regulation (Cap. 541 sub. leg. K) (“the principal Regulation”) allows a person to make, under certain circumstances, an objection to another person’s registration in the final register of electors by means of lodging a notice of objection in person. Section 2 amends that section to provide that an imprisoned person or a person detained under any lawful authority may send a notice of objection by post.

3. Section 25 of the principal Regulation allows a person to object to certain decisions of the Electoral Registration Officer by making a claim by means of lodging a notice of claim in person. Section 3 amends that section to provide that an imprisoned person or a person detained under any lawful authority may send a notice of claim by post.