

Ref.: REO 14-37/5 (Con)

LEGISLATIVE COUNCIL BRIEF

Electoral Affairs Commission Ordinance (Cap. 541)

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) (AMENDMENT) REGULATION 2018

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (DISTRICT COUNCILS) (AMENDMENT) REGULATION 2018

ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (ELECTION COMMITTEE) (AMENDMENT) REGULATION 2018

ELECTORAL PROCEDURE (CHIEF EXECUTIVE ELECTION) (AMENDMENT) REGULATION 2018

ELECTORAL PROCEDURE (RURAL REPRESENTATIVE ELECTION) (AMENDMENT) REGULATION 2018

INTRODUCTION

On 1 August 2018, the Electoral Affairs Commission (“EAC”) made five amendment regulations at **Annex A to E** (“Amendment Regulations”) to amend five regulations under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”). The amendments aim to refine the requirements relating to the identity documents that electors must produce in applying for ballot papers.

BACKGROUND

2. On 19 June 2017, the EAC made five amendment regulations under the EACO (collectively referred to as “the 2017 Amendment Regulations”) which implemented the EAC’s recommendation in its report on the 2016 Legislative Council (“LegCo”) General Election that an elector must produce the original of his/her Hong Kong Permanent Identity Card

(“HKID”) before ballot paper(s) can be issued to him/her, provided for alternative measures in case such an original cannot be produced as well as the arrangements for electors in dedicated polling stations (“DPSs”) set up at penal institutions of the Correctional Services Department (“CSD”).

3. Under the 2017 Amendment Regulations, a Presiding Officer (“PRO”) must not give a ballot paper to a person unless the PRO is satisfied, by inspecting the original of the person’s identity document, typically an HKID, that he/she is the person registered in the Final Register (“FR”). To cater for the possibility that electors might not be able to produce the original of their HKIDs, a number of alternative measures have been put in place under the 2017 Amendment Regulations, such that the PRO may still issue ballot paper(s) to an elector upon inspecting the document(s) set out below, which bears the holder’s name, photograph and HKID number, and is commonly accepted as proof of identity –

- (a) the original of an acknowledgement of application for the HKID issued by the Immigration Department (“ImmD”) when the person has applied for, but is awaiting, the issuance of an HKID; or
- (b) the original of the person’s valid Hong Kong Special Administrative Region (“HKSAR”) Passport; or
- (c) the original of the person’s valid seaman’s identity book issued by ImmD; or
- (d) the original of the person’s valid document of identity for visa purposes issued by ImmD; or
- (e) a document evidencing a report to a police officer of the loss or destruction of the person’s identity document (commonly referred to as “a memo of lost property”), together with the original of the person’s valid passport or similar travel document (e.g. a passport (other than the HKSAR Passport) or the Home Return Permit) showing his/her name and photograph, and a copy of his/her identity document in paper form showing his/her name, photograph and identity document number.

4. For an elector in a DPS set up at a panel institution of the CSD, the PRO concerned may issue ballot paper(s) upon inspecting the document issued by the Commissioner of Correctional Services showing that person’s name, photograph and prisoner registration number (i.e. his/her identity tag).

5. The 2017 Amendment Regulations were gazetted on 23 June 2017 and tabled at the LegCo on 28 June 2017 for negative vetting. A Subcommittee was formed to scrutinise them. In response to Members' comments raised during the meeting of the Subcommittee on 9 October 2017, the Government, with the EAC's agreement in-principle, had proposed to move a motion for the following amendments ("proposed amendments") –

- (a) to revise the alternative measure set out in paragraph 3(e) above, such that the PRO may still issue ballot paper(s) to an elector if the PRO is satisfied with the elector's identity upon inspecting a memo of lost property and the original of the person's valid passport or similar travel document showing his/her name and photograph. In other words, a copy of the person's identity document in paper form showing his/her name, photograph and identity document number would no longer be required; and
- (b) to include specific references to the identity documents that could be accepted by the PRO in issuing ballot papers to electors in the relevant provisions, instead of relying on references to the definitions of "identity document" so as to provide greater clarity.

6. The Government was, however, unable to move a motion to amend the 2017 Amendment Regulations as the Subcommittee Chairman's motion to extend the scrutiny period of the 2017 Amendment Regulations to 8 November 2017 could not be dealt with before the adjournment of the LegCo meeting on 18 October 2017. Nonetheless, with the Subcommittee Members' general support towards the proposed amendments, the Government undertook to invite the EAC to consider introducing another set of subsidiary legislation incorporating the proposed amendments for scrutiny by the LegCo through the negative vetting procedure.

7. At its meeting held on 26 July 2018, the EAC, having considered the justifications set out in paragraphs 8 to 14 below, endorsed the proposed amendments with the aim to refine the requirements relating to the identity documents that electors must produce in applying for ballot papers.

JUSTIFICATIONS

(A) Relaxing the document requirement of an alternative measure

8. There have been views that the alternative measure requiring an elector who has lost his/her HKID to produce three documents, namely a memo of lost property, the original of a valid passport or similar travel document showing his/her name and photograph, and the copy of his/her HKID in paper form, when applying for ballot paper(s), was over-stringent; and that some electors might have difficulties in producing these required documents should they lose their HKIDs on the polling day, and they may not have readily kept a copy of their HKIDs in paper form.

9. The suggestion to drop the requirement of producing a copy of the elector's HKID in paper form has been carefully considered. Noting the information contained in the memo of lost property, i.e. the name and HKID number of an elector, could be used to cross-check against the information that appears on the passport or similar travel document concerned, and the relevant entry in the FR, and it is a criminal offence to make a false report to the police, we consider the authenticity of the information provided in the memo of lost property could be relied upon.

10. We **propose** to relax the document requirement of the said alternative measure such that an elector should still be allowed to collect a ballot paper by producing only the memo of lost property and the original of a valid passport or similar travel document (e.g. a passport (other than the HKSAR Passport) or the Home Return Permit) showing his/her name and photograph, without presenting a copy of his/her HKID in paper form at the same time.

(B) Setting out the “identity document” to be accepted in a clearer manner

11. There were suggestions that the Government should consider outlining in the provisions on issuance of ballot papers all the “identity documents” that could be accepted by the PROs before issuance of ballot papers. At present, the electoral legislation makes reference to “identity document” as defined by the respective regulations under the EACO or the main Ordinances when it comes to issuance of ballot papers. For instance, the term “identity document” referred to in section 50(1A)(a) of Cap. 541D is construed according to the definition of “identity document” in section 2 of the same regulation. According to that provision, “identity document”

has the meaning assigned to it by section 3(1) of the Legislative Council Ordinance (Cap. 542), which stipulates that “identity document” means –

- (a) an identity card issued to a person under the Registration of Persons Ordinance (Cap. 177); or
- (b) a document issued to a person under regulations in force under that Ordinance certifying that the person is exempt from being required to register under that Ordinance; or
- (c) any other document issued to a person that is acceptable to the Electoral Registration Officer (“ERO”) as proof of the person’s identity.

12. In respect of the issuance of ballot papers by PROs to electors, the ERO (for the LegCo, District Council (“DC”) and Election Committee Subsector (“ECSS”) Elections) or the Returning Officer (for Chief Executive (“CE”) Elections) does not accept any document other than HKIDs and the Certificates of Exemption issued by the ImmD (items (a) and (b) in paragraph 11 above)¹. There have been enquiries from LegCo Members about whether item (c) in section 3(1) of Cap. 542 (i.e., “any other document issued to a person that is acceptable to the ERO as proof of the person’s identity”) may infer that documents other than those specified in the regulation could be accepted by the PRO for issuance of ballot papers after inspection.

13. To provide greater clarity in the regulations, we **propose** to change the reference to “identity document” in the relevant provisions² to specific references to the identity documents that could be accepted by the PROs in issuing ballot papers to electors, i.e. the HKIDs and the Certificates of Exemption issued by the ImmD.

¹ As for Rural Representative election, given that electors of Indigenous Inhabitant Representative elections may not have an HKID, the ERO will accept passport or identity document issued by the relevant authority of other country/territory for the purpose of voter registration, and the electors must produce their Hong Kong Identity Card or that identity document (recorded in the voter registration application form) for collection of ballot papers. For the Resident Representative and Kaifong Representative elections, the identity documents accepted by the PROs will be the same as those for LegCo and DC Elections. The PRO would only accept HKIDs, Certificate of Exemption issued by ImmD and those documents specified in sections 45(2A)(b) to (f) of Cap. 541L for issuance of ballot papers after verification and checking of particulars. Ten days before the polling day, the Home Affairs Department will send a polling notice and voting guides to the electors advising them the above voting arrangements.

² Section 50(1A)(a) of Cap. 541D, section 53(1A)(a) of Cap. 541F, section 50(1A)(a) of Cap. 541I, and section 34(1A)(a) of Cap. 541J.

14. We also **propose** to accordingly amend provisions³ in respect of the LegCo, DC, ECSS and CE Elections to specify clearly that the document evidencing a report to a police officer of the loss or destruction of an elector’s “identity document” should be in respect of the loss or destruction of his/her HKID, Certificate of Exemption, or an acknowledgement of application for the HKID (this is because a person who has lost the acknowledgement of application for the HKID will similarly be unable to produce his/her HKID in applying for ballot papers). For the same reason, we **propose** to amend the relevant provision⁴ in respect of the Rural Representative Elections to include a specific reference to the acknowledgement of application for the HKID as well.

THE AMENDMENT REGULATIONS

15. The five Amendment Regulations seek to amend the following Regulations under the EACO –

- (a) Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D);
- (b) Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F);
- (c) Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I);
- (d) Electoral Procedure (Chief Executive Election) Regulation (Cap. 541J); and
- (e) Electoral Procedure (Rural Representative Election) Regulation (Cap. 541L),

to update the list of documents to be inspected by the PRO or polling officer, as appropriate, for satisfying himself or herself of the identity of an elector before giving a ballot paper to that person.

³ Section 50(1A)(f)(i) of Cap. 541D, section 53(1A)(f)(i) of Cap. 541F, section 50(1A)(f)(i) of Cap. 541I and section 34(1A)(f)(i) of Cap. 541J.

⁴ Section 45(2A)(f)(i) of Cap. 541L.

LEGISLATIVE TIMETABLE

16. The Amendment Regulations will be published in the Gazette on 10 August 2018 and tabled at the LegCo on 10 October 2018 for negative vetting. Subject to negative vetting by the LegCo, the Amendment Regulations will come into operation on 10 December 2018.

IMPLICATIONS OF THE AMENDMENT REGULATIONS

17. The Amendment Regulations are in conformity with the Basic Law, including the provisions concerning human rights. They have no financial, civil service, economic, productivity, environmental, sustainability or family implications. The amendments will not affect the current binding effect of the respective Regulations.

GENDER IMPLICATION

18. Article 7 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women requires that “State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and in particular, shall ensure to women, on equal terms with men, the right: a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies...” In the electoral system of Hong Kong, as safeguarded by the Basic Law, women have the same rights as men to vote and to stand for election in accordance with the law. The current proposal does not affect the equal rights of men and women in voting and standing for election and therefore, does not have any gender implication.

PUBLIC CONSULTATION

19. At the meeting of the LegCo Subcommittee on the 2017 Amendment Regulations on 20 October 2017, Members were generally supportive towards the proposals.

PUBLICITY

20. A press release will be issued on 8 August 2018, and a spokesperson will be made available to address public enquiries.

ENQUIRY

21. Any enquiry on the Amendment Regulations can be addressed to Miss Mary YAU Tin-wan, Deputy Chief Electoral Officer (Elections)¹ (Acting), of the Registration and Electoral Office, at 3104 2651.

Registration and Electoral Office
August 2018

**Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) (Amendment) Regulation 2018**

(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 10 December 2018.

**2. Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) Regulation amended**

The Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) is amended as set out in section 3.

**3. Section 50 amended (ballot paper to be given to person only if
Presiding Officer is satisfied of person's identity)**

(1) Section 50, Chinese text, heading—

Repeal

“在信納某人的身分的情況下”

Substitute

“信納某人身分，”。

(2) Section 50(1A)(a)—

Repeal

“document”

Substitute

“card”。

(3) After section 50(1A)(a)—

Add

“(ab) a document issued by the Commissioner (within the meaning of section 1A(1) of the Registration of Persons Ordinance (Cap. 177)) (*Commissioner of Registration*) to the person certifying that the person is exempt, under regulation 25 of the Registration of Persons Regulations (Cap. 177 sub. leg. A), from being required to register under that Ordinance;”.

(4) Section 50(1A)(b), Chinese text—

Repeal

“表明”

Substitute

“而該文件確認”。

(5) Section 50(1A)(f)—

Repeal

“all of the following documents”

Substitute

“both”。

(6) Section 50(1A)(f)(i)—

Repeal

“person's identity document;”

Substitute

“document referred to in paragraph (a), (ab) or (b); and”。

(7) Section 50(1A)(f)(ii)—

Repeal the semicolon**Substitute a full stop.**

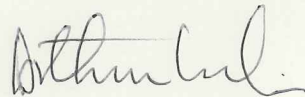
(8) Section 50(1A)(f)—

Repeal subparagraph (iii).

Made this **1st** day of August 2018.



The Hon. Mr. Justice
Barnabas Wah FUNG
Chairman,
Electoral Affairs Commission



Arthur Yee-shun LUK
Member,
Electoral Affairs Commission



Fanny M. C. CHEUNG
Member,
Electoral Affairs Commission

Explanatory Note

Section 50(1A) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D) sets out a list of documents to be inspected by the Presiding Officer of a polling station (other than a dedicated polling station situated in a prison) for satisfying himself or herself of the identity of an elector or authorized representative before giving a ballot paper to the elector or representative.

2. This Regulation updates that list.

**Electoral Affairs Commission (Electoral Procedure)
(District Councils) (Amendment) Regulation 2018**

(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 10 December 2018.

**2. Electoral Affairs Commission (Electoral Procedure) (District
Councils) Regulation amended**

The Electoral Affairs Commission (Electoral Procedure) (District
Councils) Regulation (Cap. 541 sub. leg. F) is amended as set out in
section 3.

**3. Section 53 amended (ballot paper to be given to a person only if
Presiding Officer is satisfied of the person's identity)**

(1) Section 53, Chinese text, heading—

Repeal

“在信納某人的身分的情況下”

Substitute

“信納某人身分，”。

(2) Section 53(1A)(a)—

Repeal

“document”

Substitute

“card”。

(3) After section 53(1A)(a)—

Add

“(ab) a document issued by the Commissioner (within the
meaning of section 1A(1) of the Registration of Persons
Ordinance (Cap. 177)) (*Commissioner of Registration*)
to the person certifying that the person is exempt, under
regulation 25 of the Registration of Persons Regulations
(Cap. 177 sub. leg. A), from being required to register
under that Ordinance;”。

(4) Section 53(1A)(b), Chinese text—

Repeal

“表明”

Substitute

“而該文件確認”。

(5) Section 53(1A)(f)—

Repeal

“all of the following documents”

Substitute

“both”。

(6) Section 53(1A)(f)(i)—

Repeal

“person's identity document;”

Substitute

“document referred to in paragraph (a), (ab) or (b); and”。

(7) Section 53(1A)(f)(ii)—

Repeal the semicolon

Substitute a full stop.

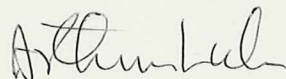
(8) Section 53(1A)(f)—

Repeal subparagraph (iii).

Made this **1st** day of August 2018.



The Hon. Mr. Justice
Barnabas Wah FUNG
Chairman,
Electoral Affairs Commission



Arthur Yee-shun LUK
Member,
Electoral Affairs Commission



Fanny M. C. CHEUNG
Member,
Electoral Affairs Commission

Explanatory Note

Section 53(1A) of the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541 sub. leg. F) sets out a list of documents to be inspected by the Presiding Officer of a polling station (other than a dedicated polling station situated in a prison) for satisfying himself or herself of an elector's identity before giving a ballot paper to the elector.

2. This Regulation updates that list.

**Electoral Affairs Commission (Electoral Procedure)
(Election Committee) (Amendment) Regulation 2018**

(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 10 December 2018.

2. Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation amended

The Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) is amended as set out in section 3.

3. Section 50 amended (ballot paper to be issued to person only if Presiding Officer is satisfied of person's identity)

(1) Section 50, Chinese text, heading—

Repeal

“在信納某人的身分的情況下”

Substitute

“信納某人身分，”。

(2) Section 50(1A)(a)—

Repeal

“document”

Substitute

“card”。

(3) After section 50(1A)(a)—

Add

“(ab) a document issued by the Commissioner (within the meaning of section 1A(1) of the Registration of Persons Ordinance (Cap. 177)) (*Commissioner of Registration*) to the person certifying that the person is exempt, under regulation 25 of the Registration of Persons Regulations (Cap. 177 sub. leg. A), from being required to register under that Ordinance;”.

(4) Section 50(1A)(b), Chinese text—

Repeal

“表明”

Substitute

“而該文件確認”。

(5) Section 50(1A)(f)—

Repeal

“all of the following documents”

Substitute

“both”。

(6) Section 50(1A)(f)(i)—

Repeal

“person's identity document;”

Substitute

“document referred to in paragraph (a), (ab) or (b); and”。

(7) Section 50(1A)(f)(ii)—

Repeal the semicolon**Substitute a full stop.**

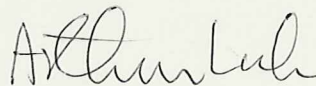
(8) Section 50(1A)(f)—

Repeal subparagraph (iii).

Made this **1st** day of August 2018.



The Hon. Mr. Justice
Barnabas Wah FUNG
Chairman,
Electoral Affairs Commission



Arthur Yee-shun LUK
Member,
Electoral Affairs Commission



Fanny M. C. CHEUNG
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Electoral Affairs Commission

Explanatory Note

Section 50(1A) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541 sub. leg. I) sets out a list of documents to be inspected by the Presiding Officer of a polling station (other than a dedicated polling station situated in a prison) for satisfying himself or herself of the identity of a voter or authorized representative before issuing a ballot paper to the voter or representative.

2. This Regulation updates that list.

Electoral Procedure (Chief Executive Election) (Amendment) Regulation 2018

(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 10 December 2018.

2. Electoral Procedure (Chief Executive Election) Regulation amended

The Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J) is amended as set out in section 3.

3. Section 34 amended (issue of ballot paper)

(1) Section 34(1A)(a)—

Repeal

“document”

Substitute

“card”.

(2) After section 34(1A)(a)—

Add

“(ab) a document issued by the Commissioner (within the meaning of section 1A(1) of the Registration of Persons Ordinance (Cap. 177)) (*Commissioner of Registration*) to the person certifying that the person is exempt, under regulation 25 of the Registration of Persons Regulations (Cap. 177 sub. leg. A), from being required to register under that Ordinance;”.

(3) Section 34(1A)(b), Chinese text—

Repeal

“表明”

Substitute

“而該文件確認”.

(4) Section 34(1A)(f)—

Repeal

“all of the following documents”

Substitute

“both”.

(5) Section 34(1A)(f)(i)—

Repeal

“person’s identity document;”

Substitute

“document referred to in paragraph (a), (ab) or (b); and”.

(6) Section 34(1A)(f)(ii)—

Repeal the semicolon

Substitute a full stop.

(7) Section 34(1A)(f)—

Repeal subparagraph (iii).

Made this 1st day of August 2018.



The Hon. Mr. Justice
Barnabas Wah FUNG
Chairman,
Electoral Affairs Commission



Arthur Yee-shun LUK
Member,
Electoral Affairs Commission



Fanny M. C. CHEUNG
Member,
Electoral Affairs Commission

Explanatory Note

Section 34(1A) of the Electoral Procedure (Chief Executive Election) Regulation (Cap. 541 sub. leg. J) sets out a list of documents to be inspected by the polling officer of a polling station (other than a dedicated polling station situated in a prison) for satisfying himself or herself of an elector's identity before issuing a ballot paper to the elector.

2. This Regulation updates that list.

**Electoral Procedure (Rural Representative Election)
(Amendment) Regulation 2018**

(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 10 December 2018.

**2. Electoral Procedure (Rural Representative Election)
Regulation amended**

The Electoral Procedure (Rural Representative Election) Regulation (Cap. 541 sub. leg. L) is amended as set out in section 3.

3. Section 45 amended (issue of ballot paper)

(1) Section 45(2A)(b)—

Repeal

“Commissioner of Registration”

Substitute

“Commissioner (within the meaning of section 1A(1) of the Registration of Persons Ordinance (Cap. 177))”.

(2) Section 45(2A)(b)(i)—

Repeal

“the Registration of Persons Ordinance (Cap. 177)”

Substitute

“that Ordinance”.

(3) Section 45(2A)(f)—

Repeal

“all of the following documents”

Substitute

“both”.

(4) Section 45(2A)(f)(i)—

Repeal

“person’s identity document;”

Substitute

“document referred to in paragraph (a) or (b); and”.

(5) Section 45(2A)(f)(ii)—

Repeal the semicolon

Substitute a full stop.

(6) Section 45(2A)(f)—

Repeal subparagraph (iii).

Made this **1st** day of August 2018.



The Hon. Mr. Justice
Barnabas Wah FUNG
Chairman,
Electoral Affairs Commission



Arthur Yee-shun LUK
Member,
Electoral Affairs Commission



Fanny M. C. CHEUNG
Member,
Electoral Affairs Commission

Explanatory Note

Section 45(2A) of the Electoral Procedure (Rural Representative Election) Regulation (Cap. 541 sub. leg. L) sets out a list of documents to be inspected by the polling officer of a polling station (other than a dedicated polling station situated in a prison) for satisfying himself or herself of an elector's identity before issuing a ballot paper to the elector.

2. This Regulation updates that list.