

## LEGISLATIVE COUNCIL BRIEF

### Electoral Affairs Commission Ordinance (Cap. 541)

#### ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) (AMENDMENT) REGULATION 2019

#### ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (DISTRICT COUNCILS) (AMENDMENT) REGULATION 2019

### INTRODUCTION

On 14 October 2019, the Electoral Affairs Commission (“EAC”) made two amendment regulations at **Annex A and Annex B** (“Amendment Regulations”) to amend two pieces of regulations under the Electoral Affairs Commission Ordinance (Cap. 541) (“EACO”). The amendments aim to revise the requirements on disclosure of personal data in Legislative Council (“LegCo”) and District Council (“DC”) elections.

### BACKGROUND

2. There is increasing concern about the protection of personal data of candidates participating in public elections. Besides, in previous public elections, some candidates had lodged complaints about the arrangement of disclosing their principal residential addresses in the gazette notices. Having regard to the concerns about the protection of personal data in public elections, we **propose** to refine the existing requirements, details of which are set out in the following paragraphs.

### JUSTIFICATIONS

(A) *Information to be printed on the gazette notices and provided in nomination forms*

3. According to the existing legislation for LegCo and DC elections, the notice of valid nominations to be published by the Returning Officers (“ROs”) in the gazette must state the principal residential address of each validly nominated candidate. The same requirement applies to gazette

notices which may be published by the ROs for an uncontested election, and in the case of the death or disqualification of a validly nominated candidate. On the other hand, for Election Committee Subsector (“ECSS”) elections, the existing legislation requires that the gazette notices to be published by the ROs will state the address of each validly nominated candidate instead.<sup>1</sup>

4. To protect the privacy of candidates, we **propose** to replace the requirement of disclosing the “principal residential address” with “address” in the gazette notices in LegCo and DC elections to align the arrangements with those of ECSS elections, so that candidates would be given the flexibility to disclose an address that they prefer, be it their office or business address, correspondence address, residential address, or post office box number.<sup>2</sup> This could strike a balance between the need for media and members of the public to contact the candidates on one hand, while protecting the privacy of candidates on the other hand. In fact, even though candidates are no longer required to provide their principal residential address in the nomination form after the legislative amendment, the Registration and Electoral Office would continue to verify whether the nominees are registered geographical constituency electors, which is one of the prerequisites for being nominated as candidate.

5. Our proposal is also in line with the “Guidance on Use of Personal Data Obtained from the Public Domain” and recommendations in the “Survey of Public Registers maintained by Government and Public Bodies” published by Office of the Privacy Commissioner for Personal Data in August 2013 and July 2015 respectively, which advised that the amount of personal data that is made publicly accessible shall be limited to what is necessary, and

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<sup>1</sup> As for Chief Executive elections, the gazette notice will only state the name of the candidate without providing the address of the candidate. However, as the RO shall also declare the names of those members of the Election Committee nominating the candidates in the gazette notice in accordance with section 18 of the Chief Executive Election Ordinance (Chapter 569), such information could help differentiate candidates with the same name, if any.

<sup>2</sup> The same concerns apply to the Rural Representative (“RR”) elections, which consist of Resident Representative election (“ReR”), Kaifong Representative election (“KFR”) and Indigenous Inhabitant Representative election (“IIR”). Under the existing legislations for RR elections, the various notices of nominations to be published by the ROs in the gazette must state the principal residential address of each validly nominated candidate. However, unlike the LegCo and DC elections, there is a residency requirement for the candidates of ReR and KFR elections. We therefore need more time to study carefully the information to be published in the gazette notices and will introduce the legislative amendments at a later stage. In the interim, we will adopt an administrative measure to obliterate the principal residential address of the candidates and subscribers in the nomination forms of the IIR By-election during the public inspection period. As for ReR and KFR By-elections, only part of the principal residential address of candidates and subscribers in the nomination form will be disclosed during the public inspection period, e.g., the village name will be disclosed while the house number will be covered.

residential address of individuals may not be necessary when an address is sufficient to serve the purpose.

***(B) Information to be printed on ballot papers***

6. The relevant electoral legislation for LegCo and DC elections also stipulates that a ballot paper, if the EAC so determines, is to contain the address of the candidate as shown on the notice of nominations. Given that other particulars of candidates, including party emblems, party names, photos, and alias are printed on the ballot papers, there should be no difficulties for electors to differentiate various candidates in practice even if they have the same name. It is therefore not necessary to state the principal residential address of candidates on the ballot papers. In fact, no such address has been printed on the ballot papers in public elections held in the past (at least a decade). In this connection, we **propose** to amend the relevant legislation of LegCo and DC elections such that the provisions on printing of principal residential address of the candidates will be removed.

**THE AMENDMENT REGULATIONS**

7. The two Amendment Regulations seek to amend the following Regulations under the EACO –

- (a) Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D); and
- (b) Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F)

to revise the requirement on disclosing the principal residential address of candidates in the gazette notices published by the ROs and in the nomination forms, as well as on the ballot papers.

**LEGISLATIVE TIMETABLE**

8. The Amendment Regulations will be published in the Gazette on 18 October 2019 and tabled at the LegCo on 23 October 2019 for negative vetting. The Electoral Affairs Commission (Electoral Procedure) (District Council) (Amendment) Regulation 2019 will take effect on the date of gazettal, i.e., 18 October 2019, such that the notice of valid nominations in the 2019 DC Ordinary Election to be published by the ROs in the gazette on 30 October 2019, a date fixed in accordance with the law, will state only the

address chosen by each validly nominated candidate.<sup>3</sup> Meanwhile, the amendment regulation will still be subject to negative vetting by the LegCo in accordance with the statutory requirement whereby the 28-day scrutiny period will run from 23 October to 20 November 2019, extendable by 21 days as necessary.<sup>4</sup> Postponing the effective date to a date after the completion of the negative vetting period is not arranged as this would defeat the purpose of enabling the gazette of 30 October 2019 such that candidates' address (instead of their principal residential address) would be shown.

9. As for the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) (Amendment) Regulation 2019, the proposed commencement date is 1 January 2020 considering that there is no time urgency for it to take effect as the next LegCo general election is scheduled for the third quarter of 2020.

## **IMPLICATIONS OF THE AMENDMENT REGULATIONS**

10. 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**

11. 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.

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<sup>3</sup> The Registration and Electoral Office will issue a notice with reply slip to all candidates on the effective date of the Electoral Affairs Commission (Electoral Procedure) (District Council) (Amendment) Regulation 2019, i.e., 18 October 2019, in order to collect the "address" that candidates wish to publish on the gazette notice on behalf of the ROs.

<sup>4</sup> Assuming that the Amendment Regulations can be tabled at the LegCo meeting on 23 October 2019.

## **PUBLIC CONSULTATION**

12. We have taken into account Members' views expressed at the LegCo Panel on Constitutional Affairs on 14 February 2018 in our proposals to revise the requirements on disclosure of personal data, including the views that the disclosure of candidates' particulars during the election period would pose security risks to the candidates concerned.

## **PUBLICITY**

13. A press release will be issued on 18 October 2019. Besides, a spokesperson will be made available to address public enquiries.

## **ENQUIRY**

14. Any enquiry on the Amendment Regulations can be addressed to Miss Sabrina Lee, Deputy Chief Electoral Officer (Elections)<sup>2</sup>, of the Registration and Electoral Office, at 3104 2458.

**Registration and Electoral Office**  
**18 October 2019**

**Electoral Affairs Commission (Electoral Procedure)  
(Legislative Council) (Amendment) Regulation 2019**

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**Electoral Affairs Commission (Electoral Procedure)  
(Legislative Council) (Amendment) Regulation 2019**

(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 1 January 2020.

**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 sections 3 to 13.

**3. Section 2 amended (interpretation)**

Section 2(1)—

**Repeal the definition of *principal residential address*.**

**4. Section 10 amended (how to nominate a candidate for a  
geographical constituency or District Council (second)  
functional constituency)**

Section 10(6)(b)—

**Repeal**

“principal residential”.

**5. Section 11 amended (how to nominate a candidate for a  
functional constituency (other than District Council (second)  
functional constituency))**

Section 11(6)(b)—

**Repeal**

“principal residential”.

**6. Section 19 amended (Returning Officer to endorse invalid  
nomination forms)**

Section 19(4)—

**Repeal**

“principal residential”.

**7. Section 21 amended (Returning Officer to publish a notice of  
particulars of validly nominated candidates)**

(1) Section 21(4)(b)—

**Repeal**

“the principal residential”.

(2) Section 21(4A)(c)—

**Repeal**

“the principal residential”.

(3) Section 21(5)(a)—

**Repeal**

“the principal residential”.

**8. Section 22 amended (Returning Officer to publish a notice for  
the purposes of section 46(1) of the Legislative Council  
Ordinance)**

Section 22(4)(b)—

**Repeal**

“the principal residential”.

9. **Section 22A amended (Returning Officer to notify and declare if a validly nominated candidate for a geographical constituency or District Council (second) functional constituency is proved to have died)**

Section 22A(4)(a) and (c)—

**Repeal**

“the principal residential”.

10. **Section 22B amended (Returning Officer to notify and declare if a validly nominated candidate for a geographical constituency or District Council (second) functional constituency is proved to be disqualified)**

Section 22B(4)(a) and (d)—

**Repeal**

“the principal residential”.

11. **Section 22C amended (no poll upon death or disqualification of candidate for a geographical constituency or District Council (second) functional constituency under certain circumstances)**

Section 22C(3)(b)—

**Repeal**

“the principal residential”.

12. **Section 49 amended (form of ballot papers and order of appearance of lists or names of candidates on ballot papers)**

(1) Section 49(13)(aa)—

**Repeal the semicolon**

**Substitute**

“; and”.

(2) Section 49(13)—

**Repeal paragraph (b).**

13. **Schedule 3 amended (forms of ballot papers for a general election/by-election)**

(1) Schedule 3, Form 1—

**Repeal**

“†” (wherever appearing).

(2) Schedule 3, Form 1—

**Repeal**

“Address of the candidate to be included if required under section 49(13)(b).”.

(3) Schedule 3, Form 2—

**Repeal**

“†” (wherever appearing).

(4) Schedule 3, Form 2—

**Repeal**

“Address of the candidate to be included if required under section 49(13)(b).”.

(5) Schedule 3, Form 2A—

**Repeal**

“+” (wherever appearing).

(6) Schedule 3, Form 2A—

**Repeal**

“Address of the candidate to be included if required under section 49(13)(b).”.

(7) Schedule 3, Form 3(a)—



**Repeal**

“†” (wherever appearing).

- (8) Schedule 3, Form 3(a)—

**Repeal**

“Address of the candidate to be included if required under section 49(13)(b).”.

- (9) Schedule 3, Form 3(b)—

**Repeal**

“†” (wherever appearing).

- (10) Schedule 3, Form 3(b)—

**Repeal**

“Address of the candidate to be included if required under section 49(13)(b).”.

Made this 14<sup>th</sup> day of October 2019.



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**

This Regulation revises the requirements of disclosing the principal residential addresses of candidates in Legislative Council elections on nomination forms and by notices, and removes the requirement of disclosing their addresses on ballot papers.

**Electoral Affairs Commission (Electoral Procedure)  
(District Councils) (Amendment) Regulation 2019**

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**Electoral Affairs Commission (Electoral Procedure)  
(District Councils) (Amendment) Regulation 2019**

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

1. **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 sections 2 to 10.
2. **Section 2 amended (interpretation)**  
Section 2(1)—  
**Repeal the definition of *principal residential address*.**
3. **Section 12 amended (how to nominate a candidate for a constituency)**  
Section 12(6)(b)—  
**Repeal**  
“principal residential”.
4. **Section 19 amended (Returning Officer to endorse invalid nomination forms)**  
Section 19(4)—  
**Repeal**  
“principal residential”.

5. **Section 22 amended (Returning Officer to publish a notice of particulars of validly nominated candidates)**  
Section 22(4)(a)—  
**Repeal**  
“the principal residential”.
6. **Section 23 amended (Returning Officer to publish a notice for the purposes of section 39(1) of the District Councils Ordinance)**  
Section 23(2)(b)—  
**Repeal**  
“the principal residential”.
7. **Section 24 amended (Returning Officer to notify and declare if a validly nominated candidate is proved to have died)**
  - (1) Section 24(4)(a) and (c)—  
**Repeal**  
“the principal residential”.
  - (2) Section 24(10)(b)—  
**Repeal**  
“the principal residential”.
8. **Section 25 amended (Returning Officer to vary decision if a validly nominated candidate is proved to be disqualified)**
  - (1) Section 25(4)(a) and (d)—  
**Repeal**  
“the principal residential”.
  - (2) Section 25(10)(b)—

**Repeal**

“the principal residential”.

9. **Section 52 amended (form of ballot paper and order of appearance of names of candidates on ballot papers)**

(1) Section 52(7)(aa)—

**Repeal the semicolon**

**Substitute**

“; and”.

(2) Section 52(7)—

**Repeal paragraph (b).**

10. **Schedule 2 amended (form of ballot paper for an ordinary election/by-election)**

(1) Schedule 2—

**Repeal**

“+” (wherever appearing).

(2) Schedule 2—

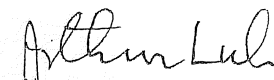
**Repeal**

“Address of the candidate to be included if required under section 52(7)(b).”.

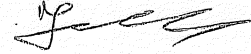
Made this 14<sup>th</sup> day of October 2019.



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### **Explanatory Note**

This Regulation revises the requirements of disclosing the principal residential addresses of candidates in District Council elections on nomination forms and by notices, and removes the requirement of disclosing their addresses on ballot papers.