
Rural Representative Election (Amendment) Bill 2022

Contents

Clause	Page
Part 1	
Preliminary	
1.	Short title and commencement C1195
2.	Enactments amended C1195
Part 2	
Oath-taking Requirement	
3.	Section 2A amended (effect of inclement weather warning on date) C1197
4.	Section 7 amended (how long a Rural Representative holds office) C1199
5.	Section 9 amended (when a Rural Representative is disqualified from holding office) C1199
6.	Section 11 amended (when a vacancy occurs in office of rural representative) C1199
7.	Section 23 amended (when a person is disqualified from being nominated as a candidate and from being elected as a Rural Representative) C1201

Clause		Page
8.	Sections 36B and 36C added	C1203
	36B. Written oath of Rural Representative	C1203
	36C. Consequence of declining or neglecting to take oath	C1205
9.	Section 58 amended (proceedings against persons on grounds of disqualification).....	C1205
10.	Schedule 7 added	C1211
	Schedule 7 Rural Representative Oath	C1211

Part 3

Inspection of Omissions List

11.	Section 17 amended (Electoral Registration Officer to compile and publish registers of electors).....	C1215
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Part 4

Miscellaneous Amendments

12.	Section 43 amended (period within which election petition and appeal must be lodged).....	C1217
13.	Schedule 1 amended (Existing Village)	C1217
14.	Schedule 2 amended (Indigenous Village).....	C1219

Part 5

Related Amendments

Division 1—High Court Ordinance (Cap. 4)

15.	Section 14 amended (appeals in civil matters)	C1221
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Clause	Page
Division 2—Hong Kong Court of Final Appeal Ordinance (Cap. 484)	
16.	Section 22 amended (civil appeals) C1221
17.	Section 24 amended (applications for leave to appeal)..... C1223
Division 3—Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541 sub. leg. K)	
18.	Section 19 amended (ERO to publish notice that omissions list is available for public inspection)..... C1223
Division 4—Electoral Procedure (Rural Representative Election) Regulation (Cap. 541 sub. leg. L)	
19.	Section 91 amended (interpretation (Part 10))..... C1231
Division 5—District Councils Ordinance (Cap. 547)	
20.	Schedule 3 amended..... C1231

A BILL

To

Amend the Rural Representative Election Ordinance to add new grounds for disqualification from being nominated as a candidate for election as a Rural Representative and for disqualification from being elected, and from holding office, as a Rural Representative; to provide for the requirement for a person elected as a Rural Representative to sign and return a written oath as a prerequisite for holding office and for the consequence of declining or neglecting to take the oath; to remove the time limit within which proceedings may be brought by the Secretary for Justice against a person on the ground of disqualification from acting as a Rural Representative; to provide for suspension of functions of a Rural Representative on certain of such proceedings being brought by the Secretary for Justice; to limit the inspection of omissions list to certain classes of persons; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Rural Representative Election (Amendment) Ordinance 2022.
- (2) Subject to subsections (3), (4) and (5), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Parts 2 and 4 and Divisions 1, 2 and 4 of Part 5—
 - (a) come into operation on the day on which this Ordinance is published in the Gazette for the purpose only of enabling arrangements to be made for the holding of the 2023 rural ordinary election; and
 - (b) in so far as they have not come into operation under paragraph (a), come into operation on 1 April 2023.
- (4) Part 3 and Division 3 of Part 5 come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.
- (5) Division 5 of Part 5 comes into operation on 1 April 2023.

2. Enactments amended

- (1) The Rural Representative Election Ordinance (Cap. 576) is amended as set out in Parts 2, 3 and 4.
 - (2) The enactments specified in Part 5 are amended as set out in that Part.
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Part 2

Oath-taking Requirement

3. **Section 2A amended (effect of inclement weather warning on date)**
- (1) Section 2A, heading—
Repeal
“on date”
Substitute
“etc. on date and period”.
- (2) Section 2A(2), English text—
Repeal
“day, which”
Substitute
“day which”.
- (3) After section 2A(2)—
Add
“(3) If—
(a) a person is required by section 36B(1) to do an act within a period; and
(b) the last day of the period falls on—
(i) an inclement weather warning day; or
(ii) a Saturday or a general holiday,
that section has effect in relation to the act as if the period is extended to end on the next working day which is not an inclement weather warning day, following the day mentioned in paragraph (b).”.

4. Section 7 amended (how long a Rural Representative holds office)

Section 7(3)(a)—

Repeal

“the result of the by-election is declared”

Substitute

“the Director received the Rural Representative Oath signed and returned by the person in accordance with section 36B(1)”.

5. Section 9 amended (when a Rural Representative is disqualified from holding office)

After section 9(2)—

Add

“(2A) A person elected as a Rural Representative is disqualified from holding office if the person, after being elected—

- (a) is in breach of the Rural Representative Oath taken under section 36B; or
- (b) fails, or is declared or decided in accordance with any law to have failed, to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

6. Section 11 amended (when a vacancy occurs in office of rural representative)

Section 11(1)(b), after “section 9”—

Add

“or 36C”.

7. **Section 23 amended (when a person is disqualified from being nominated as a candidate and from being elected as a Rural Representative)**

(1) After section 23(1)—

Add

“(1A) A person is disqualified from being nominated as a candidate at an election, and from being elected as a Rural Representative for a Rural Area, if the election is held or is to be held within 5 years after—

- (a) the date on which the person vacates an office, or is disqualified from holding or entering on an office, under the law, for declining or neglecting to take a specified oath; or
- (b) the date on which the person is declared or decided in accordance with any law—
 - (i) to be in breach of a specified oath; or
 - (ii) to have failed to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

(2) After section 23(5)—

Add

“(6) In subsection (1A)—

specified oath (指明誓言) means an oath taken under the law that the oath-taker will uphold the Basic Law and bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China.”.

8. Sections 36B and 36C added

After section 36A—

Add**“36B. Written oath of Rural Representative**

- (1) A person elected as a Rural Representative (*RR-elect*) must, within the specified period—
 - (a) sign a Rural Representative Oath in the form prescribed in Schedule 7; and
 - (b) return the signed Rural Representative Oath, either in person or by hand, to the Director during ordinary business hours.
- (2) Despite sections 36 and 36A, an RR-elect must not hold office unless the Director has received the Rural Representative Oath signed and returned in accordance with subsection (1).
- (3) An RR-elect must neither perform any of the functions under sections 5, 6 and 6A, nor become a member of the Rural Committee under section 61, unless the Director has received the Rural Representative Oath signed and returned in accordance with subsection (1).
- (4) In this section—

ordinary business hours (通常辦公時間) means the hours between 9 a.m. and 6 p.m. on any working day;

specified period (指明限期)—

 - (a) for a rural ordinary election—means the shorter of the following—

- (i) the period of 30 days beginning on the date of the publication of the result of election under section 36 (*publication date*);
 - (ii) the period beginning on the publication date and ending on the expiry of the 7th working day before 31 March next following the ordinary election; and
- (b) for a rural by-election—means the period of 30 days beginning on the publication date;

working day (工作日) means any Monday, Tuesday, Wednesday, Thursday or Friday other than a general holiday.

36C. Consequence of declining or neglecting to take oath

- (1) A person elected as a Rural Representative (*RR-elect*) who declines or neglects to take the Rural Representative Oath under section 36B, is to be disqualified from holding the office.
- (2) An RR-elect is to be regarded as declining or neglecting to take the Rural Representative Oath if the Director does not receive the Rural Representative Oath signed and returned by the RR-elect in accordance with section 36B(1).”.

9. Section 58 amended (proceedings against persons on grounds of disqualification)

- (1) Section 58—
Repeal subsection (2).
- (2) Before section 58(3)—
Add

- “(2A) Immediately after proceedings are brought by the Secretary for Justice under this section against a person on the ground that the person is disqualified from acting as a Rural Representative—
- (a) for breach of the Rural Representative Oath taken under section 36B; or
 - (b) for failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China,
- the person’s functions as a Rural Representative are suspended until the decision of the Court in the proceedings becomes final.
- (2B) For the purposes of subsection (2A), a decision of the Court becomes final—
- (a) if no motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(g) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is filed by the end of the period specified under subsection (4B)—when that period expires; or
 - (b) if, before the end of that period, motion for the purpose of such an application is filed—
 - (i) when the application is abandoned or otherwise ceases to have effect;
 - (ii) when the application is refused; or
 - (iii) if the application is granted—
 - (A) when the appeal is abandoned or otherwise ceases to have effect; or
 - (B) when the appeal is determined.

- (2C) If a person's functions as a Rural Representative are suspended under subsection (2A), the person—
- (a) must not act as a Rural Representative;
 - (b) must not do anything for the purpose of carrying into effect the provisions of this Ordinance or any other enactment conferring functions on a Rural Representative; and
 - (c) must not enjoy any corresponding entitlement.
- (2D) The Court may, on the application of a person whose functions as a Rural Representative are suspended under subsection (2A), lift the suspension.
- (2E) If a person acts, or claims to be entitled to act, as a Rural Representative while his or her functions as a Rural Representative are suspended under subsection (2A), the Secretary for Justice may apply to the Court for an interim injunction restraining the person from so acting or claiming.”.
- (3) After section 58(4)—

Add

- “(4A) If, in proceedings brought under this section, it is proved that the defendant was disqualified from acting as a Rural Representative beginning on a date, the defendant ceased to be entitled to any corresponding entitlement beginning on that date.
- (4B) Despite section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), notice of a motion for the purpose of an application for leave to appeal to the Court of Final Appeal under section 22(1)(g) of that Ordinance must be filed within 14 working days after the date on which the written judgment of the Court to be appealed from is handed down, and the

applicant must give the opposite party 3 days’ notice of his or her intended application at any time during the period of 14 working days.”.

(4) After section 58(6)—

Add

“(7) In subsection (4B)—

working day (工作日) means any day other than—

- (a) a general holiday;
- (b) a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (c) a gale warning day as defined by that section.”.

10. Schedule 7 added

After Schedule 6—

Add

“Schedule 7

[s. 36B]

Rural Representative Oath

I, *.....,
of *.....

**affirm/swear that—

- (a) I will duly and faithfully fulfil the functions of a Rural Representative according to the best of my ability;
- (b) I will uphold the Basic Law;

- (c) I will bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China; and
- (d) to the best of my knowledge and belief I am not disqualified from holding office as a Rural Representative by virtue of section 9 of the Rural Representative Election Ordinance (Cap. 576).

**Affirmed/sworn this *..... day of *.....

(Signature)

This oath was **affirmed/sworn and signed before me, a **Commissioner for Oaths/Justice of the Peace/Solicitor with a practising certificate.

(Signature)

* Complete as appropriate.

** Delete whichever is inapplicable.”

Part 3

Inspection of Omissions List

11. Section 17 amended (Electoral Registration Officer to compile and publish registers of electors)

Section 17—

Repeal subsection (6)

Substitute

- “(6) The Electoral Registration Officer must, for the period prescribed for the purposes of this subsection by the EAC Regulations—
- (a) keep the omissions list at the Officer’s office; and
 - (b) during the ordinary business hours of that office, make the omissions list or a specific part of that list available for inspection free of charge in accordance with the EAC Regulations.”.
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Part 4

Miscellaneous Amendments

12. Section 43 amended (period within which election petition and appeal must be lodged)

After section 43(2)—

Add

“(3) In subsection (2)—

working day (工作日) means any day other than—

- (a) a general holiday;
- (b) a black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1); or
- (c) a gale warning day as defined by that section.”.

13. Schedule 1 amended (Existing Village)

(1) Schedule 1, English text, column 5—

Repeal

“Ping Shan Rural Committee” (wherever appearing)

Substitute

“Ping Shan Heung Rural Committee”.

(2) Schedule 1, Chinese text, column 5—

Repeal

“西貢鄉事委員會” (wherever appearing)

Substitute

“西貢區鄉事委員會”.

14. Schedule 2 amended (Indigenous Village)

(1) Schedule 2, English text, column 4—

Repeal

“Ping Shan Rural Committee” (wherever appearing)

Substitute

“Ping Shan Heung Rural Committee”.

(2) Schedule 2, Chinese text, column 4—

Repeal

“西貢鄉事委員會” (wherever appearing)

Substitute

“西貢區鄉事委員會”.

Part 5

Related Amendments

Division 1—High Court Ordinance (Cap. 4)

15. Section 14 amended (appeals in civil matters)

Section 14(3)(g)—

Repeal

“or (f)”

Substitute

“, (f) or (g)”.

Division 2—Hong Kong Court of Final Appeal Ordinance (Cap. 484)

16. Section 22 amended (civil appeals)

(1) Section 22(1)(e)—

Repeal

“and”.

(2) Section 22(1)(f)—

Repeal

“Schedule).”

Substitute

“Schedule); and”.

(3) After section 22(1)(f)—

Add

“(g) at the discretion of the Court, from a decision of the Court of First Instance in proceedings brought under section 58 of the Rural Representative Election Ordinance (Cap. 576) (including a decision for the purpose of an application under section 58(2D) of that Ordinance).”.

17. Section 24 amended (applications for leave to appeal)

Section 24(3)—

Repeal

“or (f)”

Substitute

“, (f) or (g)”.

**Division 3—Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation
(Cap. 541 sub. leg. K)**

18. Section 19 amended (ERO to publish notice that omissions list is available for public inspection)

(1) Section 19, heading—

Repeal

“public inspection”

Substitute

“inspection by specified persons”.

(2) Section 19(2)—

Repeal

“public inspection”

Substitute

“inspection by specified persons”.

- (3) Section 19(3)—

Repeal

“public inspection”

Substitute

“inspection by specified persons”.

- (4) Section 19(3)—

Repeal

“inspected by the public”

Substitute

“so inspected”.

- (5) After section 19(3)—

Add

“(3A) A person falling within paragraph (d), (e), (f) or (g) of the definition of *specified person* in subsection (5) may, in that capacity, inspect under this section only—

- (a) for a Rural Committee in respect of a Rural Area—a copy of the extract of the omissions list that relates to the Rural Area;
- (b) for a resident of an Existing Village—a copy of the extract of the omissions list that relates to the Existing Village;
- (c) for an indigenous inhabitant of an Indigenous Village or a Composite Indigenous Village—a copy of the extract of the omissions list that relates to the Indigenous Village or the Composite Indigenous Village; or

- (d) for a resident of a Market Town—a copy of the extract of the omissions list that relates to the Market Town.
- (3B) A person falling within paragraph (a), (b), (c) or (d) of the definition of *specified person* in subsection (5) may only make an inspection under this section through an individual duly authorized by the person.”.
- (6) Section 19—

Repeal subsection (4)

Substitute

- “(4) The ERO may require an individual who wishes to make an inspection under this section to—
- (a) produce to the ERO—
- (i) the identity document of the individual; and
 - (ii) for an individual through whom the person who intends to make the inspection pursuant to subsection (3B) acts—the authorization given by the person to the individual for the purposes of subsection (3B); and
- (b) complete a form furnished by the ERO.

- (5) In this section—

candidate (候選人) has the meaning given by section 2(1) of the Election Ordinance;

coming election (下一場選舉), in relation to an omissions list, means any of the following elections that is held within 1 year after the publication date of the omissions list—

- (a) a rural ordinary election;
- (b) a rural by-election;

previous election (先前選舉), in relation to an omissions list, means—

- (a) the last rural ordinary election that was held before the publication date of the omissions list; or
- (b) any rural by-election that was held after the election mentioned in paragraph (a) and before the publication date of the omissions list;

publication date (刊登日期), in relation to an omissions list, means the date on which a notice relating to the list is published in the Gazette under subsection (1);

specified person (指明人士), in relation to the inspection of an omissions list or a part of it, means—

- (a) a person who subscribes to the Government News and Media Information System maintained by the Director of Information Services;
- (b) a body or organization that is incorporated, or is registered or exempt from registration, under any law of Hong Kong—
 - (i) to which an extract was made available under section 31(1) for a purpose related to a previous election;
 - (ii) and was represented by a validly nominated candidate at a previous election; or
 - (iii) and has publicly declared an intention to arrange for any person (including a person yet to be specified) to stand as a candidate at a coming election;

- (c) the Heung Yee Kuk;
- (d) a Rural Committee;
- (e) a resident of an Existing Village;
- (f) an indigenous inhabitant of an Indigenous Village or a Composite Indigenous Village; or
- (g) a resident of a Market Town.”.

Division 4—Electoral Procedure (Rural Representative Election) Regulation (Cap. 541 sub. leg. L)

19. Section 91 amended (interpretation (Part 10))

After section 91(4)(a)—

Add

“(ab) a member of the Election Committee;”.

Division 5—District Councils Ordinance (Cap. 547)

20. Schedule 3 amended

- (1) Schedule 3, Chinese text, Part 2, item 4, column 5—

Repeal

“西貢鄉事委員會”

Substitute

“西貢區鄉事委員會”.

- (2) Schedule 3, Chinese text, Part 2, item 6, column 5—

Repeal

“西貢北鄉事委員會”

Substitute

“西貢北約鄉事委員會”.

- (3) Schedule 3, English text, Part 2, item 9, column 5—

Repeal

“Ping Shan Rural Committee”

Substitute

“Ping Shan Heung Rural Committee”.

Explanatory Memorandum

The main objects of the Bill are—

- (a) to introduce the requirement for a person elected as a Rural Representative (*RR-elect*) to sign and return a written oath before holding office;
- (b) to limit the inspection of omissions list to specified persons only; and
- (c) to extend the interpretation of election advertisement.

2. The Bill is divided into 5 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Oath-taking Requirement

4. Clause 3 amends section 2A of the Rural Representative Election Ordinance (Cap. 576) (*RREO*) to provide that if the last day of the specified period under the new section 36B of the RREO falls on an inclement weather warning day, a Saturday or a general holiday, that last day will be extended to the next working day which is not an inclement weather warning day.

5. Clause 4 amends section 7 of the RREO to tie the date of holding office in the case of by-election to the date on which the Director of Home Affairs (*Director*) received the oath signed and returned by the RR-elect in accordance with the new section 36B(1) of the RREO.

6. Clause 5 amends section 9 of the RREO to add new grounds for disqualification from holding office as a Rural Representative (*RR*). The new grounds relate to the breach of the oath taken under the new section 36B of the RREO and to the failure to fulfil the legal requirements and conditions on upholding the Basic Law of the Hong Kong Special Administrative Region (*Basic Law*) and bearing allegiance to the Hong Kong Special Administrative Region of the People's Republic of China (*HKSAR*).
7. Clause 6 amends section 11 of the RREO to include the disqualification under the new section 36C of the RREO as one of the scenarios for a vacancy to occur.
8. Clause 7 amends section 23 of the RREO to add new grounds for disqualification from being nominated as a candidate for election as an RR and from being elected as an RR. The new grounds relate to—
 - (a) vacating an office, or disqualification from holding or entering on an office, under the law, for declining or neglecting to take an oath to uphold the Basic Law and to bear allegiance to the HKSAR; and
 - (b) breach of such an oath or failure to fulfil the legal requirements and conditions on upholding the Basic Law and bearing allegiance to the HKSAR.
9. Clause 8 adds new sections 36B and 36C to the RREO.
10. The new section 36B of the RREO provides that—
 - (a) an RR-elect must sign and return a written oath in prescribed form to the Director, either in person or by hand, within a specified period;

- (b) the RR-elect must not hold office unless the Director has received the signed written oath; and
 - (c) the RR-elect must neither perform any of the functions under sections 5, 6 and 6A of the RREO, nor become a member of the Rural Committee under section 61, unless the Director has received the signed written oath.
11. The new section 36C of RREO provides for the consequence of declining or neglecting to take the written oath under the new section 36B of the RREO.
 12. Clause 9 amends section 58 of the RREO to remove the time limit within which proceedings may be brought by the Secretary for Justice against a person on the ground of disqualification from acting as an RR and to provide for suspension of functions of the RR on certain of such proceedings being brought by the Secretary for Justice.
 13. Clause 10 adds a new Schedule 7 to the RREO to prescribe the form of the written oath.

Part 3—Inspection of Omissions List

14. Clause 11 amends section 17 of the RREO to provide that the inspection of the omissions list or a specific part of that list is to be in accordance with the EAC Regulations.

Part 4—Miscellaneous Amendments

15. Clause 12 amends section 43 of the RREO to provide for the definition of *working day* for subsection (2) of that section.

16. Clauses 13 and 14 amend Schedules 1 and 2 to the RREO respectively to correct the names of certain Rural Committees.

Part 5—Related Amendments

17. Clause 15 makes a consequential amendment to the High Court Ordinance (Cap. 4).
18. Clause 16 amends section 22 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (*HKCFAO*) to provide for application for leave to appeal to the Hong Kong Court of Final Appeal in relation to proceedings brought under section 58 of the RREO.
19. Clause 17 amends section 24 of the HKCFAO to include the reference of the new paragraph (g) added to section 22 of the HKCFAO.
20. Clause 18 amends section 19 of the Electoral Affairs Commission (Registration of Electors) (Rural Representative Election) Regulation (Cap. 541 sub. leg. K) to limit the inspection of the omissions list or a specific part of that list to specified persons only.
21. Clause 19 amends section 91 of the Electoral Procedure (Rural Representative Election) Regulation (Cap. 541 sub. leg. L) to regard a document published by a candidate during an election period giving details of the candidate's work done in the capacity of a member of the Election Committee as an election advertisement.
22. Clause 20 amends Schedule 3 to the District Councils Ordinance (Cap. 547) to correct the names of certain Rural Committees.