

Chapter:	541	<b>Electoral Affairs Commission Ordinance</b>	Gazette Number	Version Date
		<b>Long title</b>	E.R. 2 of 2012	02/08/2012

An Ordinance to provide for the establishment of the Electoral Affairs Commission as a body corporate, for the purpose of making recommendations regarding the delineation of geographical constituencies and District Council constituencies and demarcation of their boundaries and to be responsible for the conduct and supervision of elections, regulating the procedure for providing financial assistance to candidates under the Legislative Council Ordinance and under the District Councils Ordinance, and matters incidental thereto.

(Amended 8 of 1999 s. 89; 25 of 2003 s. 51; 1 of 2007 s. 9)

[29 August 1997]

(Enacting provision omitted—E.R. 2 of 2012)

(Originally 129 of 1997)

(\*Format changes—E.R. 2 of 2012)

**Note:**

\*The format of the Ordinance has been updated to the current legislative styles.

Part:	1	<b>Preliminary</b>	E.R. 2 of 2012	02/08/2012
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Section:	1	<b>Short title</b>	E.R. 2 of 2012	02/08/2012
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This Ordinance may be cited as the Electoral Affairs Commission Ordinance.

Section:	2	<b>Interpretation</b>	5 of 2014	01/04/2015
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(1) In this Ordinance, unless the context otherwise requires—

**by-election** (補選) means—

- (a) a by-election within the meaning of section 3(1) of the Legislative Council Ordinance (Cap 542);
- (b) a by-election within the meaning of section 2 of the District Councils Ordinance (Cap 547); (Amended 2 of 2003 s. 68)
- (c) a subsector by-election within the meaning of section 1 of the Schedule to the Chief Executive Election Ordinance (Cap 569); or (Replaced 21 of 2001 s. 54. Amended 2 of 2003 s. 68)
- (d) a rural by-election within the meaning of section 2(1) of the Rural Representative Election Ordinance (Cap 576); (Replaced 5 of 2014 s. 63)

**Chairman** (主席) means the person appointed under section 3(2) or the person acting for him under paragraph 1(5) of Schedule 2;

**Chief Electoral Officer** (總選舉事務主任) means the person appointed as such under section 9;

**Commission** (選管會) means the Electoral Affairs Commission established by section 3;

**District Council** (區議會) has the meaning assigned to it by the District Councils Ordinance (Cap 547); (Added 8 of 1999 s. 89)

**District Council constituency** (區議會選區) means a constituency within the meaning of section 2 of the District Councils Ordinance (Cap 547); (Added 8 of 1999 s. 89)

**election** (選舉), subject to section 17, means an election held for the purpose of—

- (aa) electing the Chief Executive; (Added 21 of 2001 s. 54)
- (a) electing the members of—
  - (i) the Legislative Council; or (Amended 78 of 1999 s. 7)
  - (ii) (Repealed 78 of 1999 s. 7)

- (iii) the District Councils; (Replaced 8 of 1999 s. 89)
- (b) electing the members of the Election Committee; or (Amended 21 of 2001 s. 54; 2 of 2003 s. 68)
- (c) electing a Rural Representative for a Rural Area; (Replaced 5 of 2014 s. 63)

**Election Committee** (選舉委員會) has the meaning assigned to it by the Chief Executive Election Ordinance (Cap 569); (Replaced 21 of 2001 s. 54)

**elector** (選民) means a person whose name appears on a register of persons entitled, under any electoral law, to vote at an election;

**electoral law** (選舉法) means any law in force providing for the election of-

- (aa) the Chief Executive; (Added 21 of 2001 s. 54)
- (a) the members of the Legislative Council; (Replaced 12 of 2014 s. 106)
- (ab) the members of District Councils; (Added 12 of 2014 s. 106)
- (b) the members of the Election Committee; or (Amended 21 of 2001 s. 54; 2 of 2003 s. 68)
- (c) Rural Representatives; (Added 2 of 2003 s. 68. Amended 5 of 2014 s. 63)

**function** (職能) includes a power and a duty;

**general election** (換屆選舉) has the meaning assigned to it by the Legislative Council Ordinance (Cap 542); (Replaced 8 of 1999 s. 89)

**geographical constituency** (地方選區) subject to section 17, means a geographical area having separate representation (whether by one or more members) in the Legislative Council; (Amended 12 of 2014 s. 106)

**Legislative Council** (立法會) means the Legislative Council of the Hong Kong Special Administrative Region;

**member of the Commission** (選管會成員) includes the Chairman;

**ordinary election** (一般選舉) has the meaning assigned to it by the District Councils Ordinance (Cap 547); (Added 8 of 1999 s. 89)

**political body** (政治性團體) means-

- (a) a political party or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election;

**Provisional District Board** (臨時區議會) has the meaning assigned to it by the Provisional District Boards Ordinance (Cap 366);

**Provisional Legislative Council** (臨時立法會) means the Provisional Legislative Council of the Hong Kong Special Administrative Region;

**Rural Area** (鄉郊地區) has the same meaning as in section 2(1) of the Rural Representative Election Ordinance (Cap 576); (Added 5 of 2014 s. 63)

**Rural Representative** (鄉郊代表) has the same meaning as in section 2(1) of the Rural Representative Election Ordinance (Cap 576). (Added 5 of 2014 s. 63)

(Amended 48 of 1999 s. 50; 78 of 1999 s. 7; 5 of 2014 s. 63; 12 of 2014 s. 106)

- (2) For the avoidance of doubt it is declared that an election includes a by-election. (Amended 21 of 2001 s. 54)
- (3) Any reference in this Ordinance to the performance of a function includes a reference to the performance of a duty or exercise of a power, as the case may require.

Part:	2	<b>Establishment of Commission</b>	E.R. 2 of 2012	02/08/2012
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Section:	3	<b>Establishment and membership</b>	E.R. 2 of 2012	02/08/2012
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- (1) There is established by this section a body corporate by the name of the Electoral Affairs Commission which may sue and be sued in that name.
- (2) The Commission shall consist of-
  - (a) a Chairman; and
  - (b) 2 other members,

appointed by the Chief Executive in accordance with this section.
- (3) The person appointed as Chairman under subsection (2)(a) must be a Judge of the High Court and he must be so appointed in consultation with the Chief Justice of the Court of Final Appeal.

(4) Subject to subsection (5), only a person who has the right to vote under Article 26 of the Basic Law may be appointed or hold office as a member of the Commission.

(5) A person is not eligible for appointment as a member of the Commission or to hold office as such-

- (a) if he is nominated as a candidate in an election of the Chief Executive; (Amended 21 of 2001 s. 55)
- (b) (Repealed 8 of 1999 s. 89)
- (c) if he is or becomes a member of the Election Committee; (Amended 21 of 2001 s. 55)
- (d) if he is or becomes-
  - (i) a member of the Executive Council;
  - (ii) a member of the Legislative Council; (Amended 8 of 1999 s. 89)
  - (iii) (Repealed 78 of 1999 s. 7)
  - (iv) a member of-
    - (A) a Provisional District Board; or
    - (B) a District Council; or (Replaced 8 of 1999 s. 89)
  - (v) a member of any political body;
- (e) if he is or becomes a person described in Part 2 of Schedule 1;
- (f) if, in the opinion of the Chief Executive, he is or becomes actively engaged in politics;
- (g) if he holds a judicial office (other than that of a Judge of the High Court) within the meaning of section 2(1) of the Pension Benefits Ordinance (Cap 99);
- (h) if he is or becomes a member of any national, regional or municipal congress, legislature, assembly or council of any place outside Hong Kong;
- (i) if he is or becomes a member of-
  - (i) the National Committee of the Chinese People's Political Consultative Conference; or
  - (ii) a Local Committee of the Chinese People's Political Consultative Conference;
- (j) if he is or becomes a member of the armed forces of the Central People's Government or any other country;
- (k) if, within the 4 years immediately before the date of appointment (were he to be appointed), he-
  - (i) (Repealed 21 of 2001 s. 55)
  - (ii) (Repealed 8 of 1999 s. 89)
  - (iii) has been a member of the Election Committee; (Amended 21 of 2001 s. 55)
  - (iv) has been a member of the Executive Council;
  - (v) has been a member of the Executive Council which existed before 1 July 1997;
  - (vi) has-
    - (A) been nominated as a candidate;
    - (B) acted or been appointed as the agent of a candidate; or
    - (C) subscribed in any capacity to the nomination of a person as a candidate, in an election;
  - (vii) has been a member of the Legislative Council;
  - (viii) has been a member of a body which was known at any time during that period of 4 years as the Provisional Legislative Council, the Provisional Urban Council, the Provisional Regional Council or a Provisional District Board; (Amended 78 of 1999 s. 7)
  - (ix) has been a member of a District Council; (Replaced 78 of 1999 s. 7)
  - (x) has been a member of the election committee that was constituted for the purpose of returning persons as members of the Legislative Council for the first term of office of that Council; (Amended 21 of 2001 s. 55)
  - (xi) has been a person described in Part 3 of Schedule 1; or
  - (xii) in the opinion of the Chief Executive, has been otherwise actively engaged in politics;
- (l) if, within the 4 years immediately before the date of appointment (were he to be appointed), he has been a member of-
  - (i) any national, regional or municipal congress, legislature, assembly or council of any place outside Hong Kong;
  - (ii) the National Committee of the Chinese People's Political Consultative Conference; or
  - (iii) a Local Committee of the Chinese People's Political Consultative Conference.

(6) An appointment under subsection (2) shall be for a period-

- (a) which shall not exceed 5 years or be less than 3 years; and
- (b) specified by the Chief Executive at the time of appointment.

(7) The Chairman and other members of the Commission shall be entitled to such remuneration and allowances as

are determined by the Chief Executive.

(8) The Chief Executive shall give notice in the Gazette of any appointment under subsection (2) as soon as practicable after that appointment.

(9) Schedule 2 applies in respect of the Commission.

(10) Subsections (4) and (5) (other than subsection (5)(g)) apply in respect of a member of a committee established or appointed under section 7(1)(g), subject to necessary modifications, as if they apply in respect of a member of the Commission.

(Amended E.R. 2 of 2012)

Part:	3	<b>Functions, Power and Duties of Commission</b>	E.R. 2 of 2012	02/08/2012
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Section:	4	<b>Functions of Commission</b>	E.R. 2 of 2012	02/08/2012
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The functions of the Commission are-

- (a) to consider or review the boundaries of geographical constituencies or District Council constituencies, as the case may be, for the purpose of making recommendations under Part 5; (Amended 8 of 1999 s. 89)
- (b) to be responsible for the conduct and supervision of elections;
- (c) to be responsible for the conduct and supervision of the process for the formation of, and for filling vacancies in the membership of, the Election Committee; (Amended 21 of 2001 s. 56)
- (d) without limiting of generality of paragraphs (b) and (c), to-
  - (i) supervise the registration of electors;
  - (ii) regulate the procedure at an election; and
  - (iii) conduct or supervise promotional activities relating to registration of electors;
- (e) to keep under review the matters referred to in paragraphs (b), (c) and (d);
- (f) to report to the Chief Executive on any matter relating to elections and any process for the formation of, and for filling vacancies in the membership of, the Election Committee; (Amended 21 of 2001 s. 56)
- (g) to perform any other function it may perform or is required to perform under this or any other Ordinance; and
- (h) to generally make arrangements, take such steps or do such other things as it considers appropriate for the purpose of ensuring that elections and any process referred to in paragraph (c) are conducted openly, honestly and fairly.

(Amended E.R. 2 of 2012)

Section:	5	<b>General powers of Commission</b>	E.R. 2 of 2012	02/08/2012
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The Commission may-

- (a) acquire, hold or dispose of property of any description;
- (b) publish any material and distribute or sell such material;
- (c) make standing orders to regulate the conduct of its business or procedures;
- (d) in performing its functions under Part 5, require from any appropriate public authority or public officer, any information which it considers is reasonably required for the purpose of estimating the population of Hong Kong or any area of Hong Kong;
- (e) without limiting the generality of section 6(3), bring to the notice of the appropriate authority or person, with or without comments-
  - (i) any complaint received by the Commission; or
  - (ii) any occurrence which it considers is a material irregularity, in respect of an election, or a process for the formation of, or for filling vacancies in the membership of, the Election Committee; (Amended 21 of 2001 s. 57)
- (f) exercise the powers conferred on it by any other Ordinance; and
- (g) do such other incidental act or thing or exercise such powers as it considers necessary or expedient for the performance of its functions under this or any other Ordinance.

(Amended E.R. 2 of 2012)

Section:	6	<b>Commission to issue guidelines</b>	E.R. 2 of 2012	02/08/2012
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- (1) The Commission may issue-
  - (a) guidelines relating to-
    - (i) the conduct or supervision of or procedure at an election;
    - (ii) the activities, in connection with an election, of-
      - (A) a candidate;
      - (B) an agent of a candidate or any other person assisting a candidate; or
      - (C) any other person;
    - (iii) the conduct or supervision of or procedure relating to the formation of, or the filling of vacancies in the membership of, the Election Committee; (Amended 21 of 2001 s. 58)
  - (b) without affecting the generality of paragraph (a), guidelines relating to election expenses or the display or use of election advertisements or other publicity material in connection with an election; and
  - (c) guidelines relating to the procedure for making a complaint referred to in subsection (3).
- (2) The Commission shall consult the public in relation to the guidelines referred to in subsection (1), in such manner as it may determine, unless it considers that such consultation is not practicable due to the existence of an urgent need to issue, revoke or amend a guideline.
- (3) The Commission shall consider as soon as reasonably practicable, any complaint relating to a guideline issued under subsection (1), and make any decision or, subject to subsection (4), take such action (including the issuing of a reprimand or censure), as it considers appropriate in respect of such a complaint.
- (4) Before the Commission reprimands or censures any person under subsection (3), it shall make a reasonable effort to contact that person and give a reasonable opportunity for that person to make representations to the Commission as to why the reprimand or censure should not be issued.

Section:	7	<b>Regulations</b>	5 of 2014	01/04/2015
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- (1) The Commission may, by regulation, provide for the following-
  - (a) the-
    - (i) registration of electors;
    - (ii) determination (where applicable) of-
      - (A) the appropriate constituency; (Amended 2 of 2003 s. 68)
      - (B) in the case of the Election Committee, the appropriate sectors or subsectors; or (Amended 21 of 2001 s. 59; 2 of 2003 s. 68)
      - (C) for an election held for electing a Rural Representative for a Rural Area, the appropriate Rural Area or Rural Areas, (Replaced 5 of 2014 s. 64)
    - for such registration;
    - (iii) form, compilation, revision and correction, and the manner of publication of the register of persons entitled under any electoral law to vote at an election; and
    - (iv) ascertainment of qualifications of electors;
  - (b) the conduct or supervision of, and procedure at any election;
  - (c) the conduct or supervision of, and procedure for the formation of, or the filling of vacancies in the membership of, the Election Committee; (Amended 21 of 2001 s. 59)
  - (d) without limiting the generality of paragraphs (b) and (c)-
    - (i) the procedure for the nomination of candidates in an election, including provision for consent by a candidate for nomination, and withdrawal of a nomination;
    - (ii) the procedure for lodging a deposit in respect of the nomination of a candidate;
    - (iii) the appointment by the candidate, of agents and other persons to assist him in an election and matters relating to such appointments;
    - (iv) the designation of polling stations;
    - (v) the supervision of polling stations and the regulation of the ballot;
    - (vi) the procedure or procedures for voting and counting at an election;
    - (vii) the designation and supervision of counting stations;
    - (viii) the declaration and publication of results of an election;
    - (ix) the disposal of ballot or other papers after an election; and
    - (x) the making of a report to the Commission by any person, or any person specified in the regulations,

regarding any occurrence considered by such a person as an irregularity relating to an election, the poll or a counting of the votes;

- (e) the appointment and conduct of persons authorized to incur election expenses on behalf of candidates; (Amended 11 of 2012 s. 5)
- (ea) the matters relating to the display or use of election advertisements or other publicity materials relating to an election and matters relating to grant of relief by the Court of First Instance in respect of election advertisements; (Added 11 of 2012 s. 5)
- (f) the Commission or such other person specified in the regulations to require any information reasonably required in respect of any matter referred to in paragraph (a), from a person or a class or description of persons specified in the regulations;
- (g) the establishment or appointment of committees (including or consisting of a person or persons other than members of the Commission) and provide for the functions, proceedings and regulation of those committees;
- (h) the termination of proceedings for an election on the ground of the death or disqualification of a candidate; (Amended 8 of 1999 s. 89)
- (ha) the declaration of failure of an election; (Added 48 of 1999 s. 51)
- (hb) the procedure to implement the scheme for the payment of financial assistance set out in Part 6A of the Legislative Council Ordinance (Cap 542), including, in particular, the procedure for-
  - (i) making or withdrawing claims for financial assistance;
  - (ii) repaying to the Government amounts or parts of amounts paid as financial assistance;
  - (iii) supporting and verifying claims for financial assistance;
  - (iv) making a payment of financial assistance to a candidate or in respect of a list of candidates;
  - (v) making a claim for financial assistance in respect of the estate of a deceased person, the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations; (Added 25 of 2003 s. 52)
- (hc) the procedure to implement the scheme for the payment of financial assistance set out in Part VA of the District Councils Ordinance (Cap 547), including, in particular, the procedure for-
  - (i) making or withdrawing claims for financial assistance;
  - (ii) repaying to the Government amounts or parts of amounts paid as financial assistance;
  - (iii) supporting and verifying claims for financial assistance;
  - (iv) making a payment of financial assistance to a candidate; and
  - (v) making a claim for financial assistance in respect of the estate of a deceased person, the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations; (Added 1 of 2007 s. 10)
- (i) the determination or specification of forms; and
- (j) generally providing for the better carrying into effect the provisions and purposes of this Ordinance or any electoral law.

(1A) The Commission may by regulation-

- (a) prescribe offences for the purposes of section 14(h) of the Chief Executive Election Ordinance (Cap 569);
- (b) specify the form and manner of nomination of a candidate for the purposes of section 16(1) of the Chief Executive Election Ordinance (Cap 569);
- (c) provide for withdrawal of candidature for the purposes of section 19(2) of the Chief Executive Election Ordinance (Cap 569);
- (d) provide for the postponement or adjournment of a poll or the counting of votes in respect of a poll under section 21 of the Chief Executive Election Ordinance (Cap 569) and the appointment of a new date for the poll or the count. (Added 21 of 2001 s. 59)

(2) Subject to subsection (3), the Commission may make regulations to provide for the postponement or adjournment of-

- (a) an election;
- (b) the poll; or
- (c) the counting of votes (**the count**),

where the Commission or any person specified in the regulations is of the opinion that the election, the poll or the count is likely to be or is being obstructed, disrupted or undermined or seriously affected by-

- (i) a typhoon or other climatic condition of a serious nature;
- (ii) riot or open violence or any danger to public health or safety; or (Amended 12 of 2014 s. 80)
- (iii) an occurrence which appears to the Commission or the specified person to be a material irregularity relating to the election, the poll or the count.

(3) Subsection (2) shall not be construed as empowering the Commission to postpone or adjourn-

- (a) a general election;
- (b) (Repealed 78 of 1999 s. 7)
- (ba) an ordinary election; or (Added 8 of 1999 s. 89)
- (c) the poll (at all the polling stations) or the count in respect of a general election or an ordinary election, (Amended 78 of 1999 s. 7)

on any ground referred to in subsection (2)(ii). (Amended 8 of 1999 s. 89)

(4) The Commission may by regulation provide for-

- (a) the appointment of a new date-
  - (i) for an election, the poll or the count postponed or adjourned pursuant to subsection (2); and
  - (ii) which shall be not later than 14 days after the original date fixed for the election, the poll or the count, as the case may be; (Amended 12 of 2014 s. 80)
- (b) the procedure for the postponement or adjournment of a general election or an ordinary election or the poll or the count in respect of a general election or an ordinary election, on any ground referred to in subsection (2)(ii) by the authority or person who has power under any electoral law to effect the postponement or adjournment, and the procedure for the appointment of a new date for the election, the poll or the count by that authority or person. (Amended 8 of 1999 s. 89; 48 of 1999 s. 51; 78 of 1999 s. 7)
- (c) (Repealed 48 of 1999 s. 51)

(5) Regulations under this section may provide that any contravention of a requirement in or made under the regulations is an indictable or summary offence and is punishable by a fine not exceeding level 2 and imprisonment not exceeding 6 months. (Amended 8 of 1999 s. 89; 12 of 2014 s. 176)

(6) Regulations under this section may provide that-

- (a) where a body corporate is convicted of an offence under these regulations and the offence is proved to have been committed with the consent, connivance of, or was attributable to the neglect or omission on the part of a director, manager, secretary or any other person concerned in the management of the body corporate, the director, manager or secretary or that other person is liable for the offence; and
- (b) where a partner of a partnership is convicted of an offence and it is proved that the offence was committed with the consent or connivance of, or was attributable to the neglect or omission on the part of any other partner or person concerned in the management of the partnership, the partner or that other person is liable for the offence.

(7) In this section, **constituency** (選區或選舉界別) means-

- (aa) a District Council constituency; (Added 12 of 2014 s. 107)
- (a) a geographical constituency; or
- (b) a constituency of any other description by which one or more members may be returned to the Legislative Council under any electoral law.

(Amended E.R. 2 of 2012)

Section:	8	<b>Report on elections</b>	5 of 2014	01/04/2015
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- (1) Subject to subsections (5), (6) and (6A), within 3 months, or such longer period as the Chief Executive may allow in any particular case, of the conclusion of an election, the Commission shall make a report to the Chief Executive on matters relating to that election in respect of which the Commission has any function under this or any other Ordinance. (Amended 21 of 2001 s. 60; 2 of 2003 s. 68)
- (2) Without limiting the generality of subsection (1), a report under that subsection shall include a report on any complaint made to the Commission in connection with that election.
- (3) The Chief Executive may require the Commission to-
  - (a) make a report to him in respect of any matter specified by him relating to an election; or
  - (b) conduct a review into any such matter and make a report to him,

within a reasonable period specified by him (generally or in a particular case) and such a report shall be in addition to a report referred to in subsection (1).
- (4) The Commission shall comply with any requirement made under subsection (3).

(5) Where the election supervised by the Commission is an election of the Chief Executive, a report under subsection (1) must include a report on-

- the formation of the Election Committee; or
- the subsector by-election, if any, that precedes the election of the Chief Executive, as appropriate, unless such a report has already been included in another report previously made under subsection (1). (Replaced 25 of 2003 s. 53)

(6) The period within which the report referred to in subsection (5) is to be made shall begin only on the conclusion of the election of the Chief Executive. (Replaced 25 of 2003 s. 53)

(6A) If an election is a rural ordinary election in a series of rural ordinary elections, the period within which the report in relation to that election is to be made under subsection (1) shall begin only on the conclusion of that series of rural ordinary elections. (Added 2 of 2003 s. 68. Amended 5 of 2014 s. 65)

(7) In this section-

**rural ordinary election** (鄉郊一般選舉) has the same meaning as in section 2(1) of the Rural Representative Election Ordinance (Cap 576); (Added 5 of 2014 s.65)

**series of rural ordinary elections** (系列鄉郊一般選舉) means all the rural ordinary elections to elect the Rural Representatives whose terms of office will commence on the same date under the Rural Representative Election Ordinance (Cap 576); (Added 5 of 2014 s.65)

**subsector by-election** (界別分組補選) has the meaning assigned to it by the Chief Executive Election Ordinance (Cap 569). (Amended 5 of 2014 s. 65)

(Amended 5 of 2014 s. 65)

Part:	4	<b>General Provisions Relating to Commission</b>	E.R. 2 of 2012	02/08/2012
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Section:	9	<b>Commission performing functions through Chief Electoral Officer</b>	E.R. 2 of 2012	02/08/2012
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- Subject to section 9A, the Commission shall perform its functions through a Chief Electoral Officer who shall be appointed by the Chief Executive. (Amended 2 of 2003 s. 68)
- For the purposes of subsection (1), the Chief Electoral Officer shall, under the direction of the Commission, do all acts and things necessary for implementing the decisions of the Commission.
- The Chief Electoral Officer shall be provided with such staff as may be required.
- The Chief Electoral Officer-
  - shall, subject to subsection (5), attend the meetings of the Commission; and
  - may attend any meeting of a committee established or appointed pursuant to section 7(1)(g).
- A representative of the Chief Electoral Officer may attend any meeting of the Commission or any meeting referred to in subsection (4)(b) in the place of the Chief Electoral Officer with the consent of the person presiding at the meeting.

Section:	9A	<b>Commission performing functions through Director of Home Affairs</b>	5 of 2014	01/04/2015
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- The Commission shall perform its functions-
  - under section 4(b) in relation to the conduct of an election held for the purpose of electing a Rural Representative for a Rural Area; and (Amended 5 of 2014 s. 66)
  - under section 4(d)(iii) in relation to the conduct of promotional activities relating to registration of electors for the purpose of such an election, through the Director of Home Affairs.
- For the purposes of subsection (1), the Director of Home Affairs shall, under the direction of the Commission, do all acts and things necessary for implementing the directions of the Commission.

(Added 2 of 2003 s. 68)

Section:	10	<b>Appointees of Commission</b>	E.R. 2 of 2012	02/08/2012
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A member of the staff provided under section 9(3) or a person appointed by the Commission shall be regarded as a public servant.

Section:	11	<b>Delegation</b>	E.R. 2 of 2012	02/08/2012
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The Commission may delegate any of its functions, whether under this or any other Ordinance, other than the power to issue guidelines under section 6(1), make regulations under section 7 a duty to make a report under section 8 or its functions under Part 5, to the Chief Electoral Officer, the Director of Home Affairs or any other person it considers fit.

(Amended 2 of 2003 s. 68; E.R. 2 of 2012)

Section:	12	<b>Expenses, payments, etc.</b>	E.R. 2 of 2012	02/08/2012
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- (1) All expenses properly incurred by-
  - (a) the Commission, a member of the Commission or the Chief Electoral Officer in the performance of any function under this or any other Ordinance; or
  - (b) any other person in the performance of any function under this Ordinance, shall be payable out of the general revenue.
- (2) Any remuneration or allowance payable under section 3(7) shall be payable out of the general revenue.

Section:	13	<b>Members disqualified from nomination</b>	E.R. 2 of 2012	02/08/2012
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- (1) Subject to subsection (2)-
  - (a) a member, during his term of office, is disqualified from-
    - (i) (Repealed 21 of 2001 s. 61)
    - (ii) becoming a member of the Election Committee; or (Amended 21 of 2001 s. 61)
    - (iii) becoming a member of the Executive Council;
  - (b) a member, during his term of office, is disqualified-
    - (i) from-
      - (A) being nominated as a candidate;
      - (B) acting or being appointed as agent of a candidate;
      - (C) subscribing in any capacity to the nomination of a candidate, in an election;
    - (ii) (Repealed 21 of 2001 s. 61)
    - (iii) from being a member of a District Council; (Added 8 of 1999 s. 89)
  - (c) a person who has ceased to hold office as a member of the Commission is disqualified during the period of 4 years beginning on the date he ceases to hold office, from-
    - (i) (Repealed 21 of 2001 s. 61)
    - (ii) becoming a member of the Election Committee; (Amended 21 of 2001 s. 61)
    - (iii) becoming a member of the Executive Council;
    - (iv) holding office as a member of-
      - (A) the Legislative Council; or (Amended 8 of 1999 s. 89; 78 of 1999 s. 7)
      - (B) (Repealed 78 of 1999 s. 7)
      - (C) a District Council; (Replaced 8 of 1999 s. 89)
    - (v) being nominated as a candidate in an election;
    - (vi) acting or being appointed as the agent of a candidate in an election; or (Amended 21 of 2001 s. 61)
    - (vii) subscribing in any capacity to the nomination of a candidate in an election. (Amended 21 of 2001 s. 61)
    - (viii) (Repealed 21 of 2001 s. 61)
- (2) Subsection (1) shall not apply in relation to a person who ceases to hold office as a member within 14 days of the date of his appointment.
- (3) Subsections (1) and (2) shall apply in relation to a member of a committee established or appointed under section 7(1)(g), subject to necessary modifications, as if they apply in relation to a member of the Commission.

Section:	14	<b>Immunity</b>	E.R. 2 of 2012	02/08/2012
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- (1) No liability shall be incurred by-
  - (a) the Commission in respect of anything done, or omitted to be done, by it in good faith in the performance of a function or the purported performance of a function under this or any other Ordinance; or
  - (b) any other person in respect of anything done, or omitted to be done, by him in good faith in the performance of a function or the purported performance of a function under this Ordinance.
- (2) Without limiting the generality of subsection (1), it is declared that for the purposes of the law of defamation, any comment made under section 5(e) or the publication of any matter relating to a complaint made under section 6(3), in any communication, report or statement, in writing or otherwise, shall be absolutely privileged.

Section:	15	<b>Commission not to be regarded servant or agent of Government</b>	E.R. 2 of 2012	02/08/2012
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The Commission shall not be regarded as a servant or agent of the Government or as enjoying any status, immunity or privilege of the Government.

Section:	16	<b>Unauthorized use of Commission name</b>	E.R. 2 of 2012	02/08/2012
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- (1) A person shall not incorporate, form, be a director, office bearer or organizer of, or work in connection with, or be a member of, any body of persons, whether corporate or unincorporate, which without the written consent of the Commission-
  - (a) holds itself out to be-
    - (i) the Commission or a part thereof; or
    - (ii) in any way connected or associated with the Commission;
  - (b) uses the title "Electoral Affairs Commission" or "選舉管理委員會" or a title in any language which so closely resembles that title so as to be capable of misleading any person into believing that the body of persons is-
    - (i) the Commission or a part thereof; or
    - (ii) in any way connected or associated with the Commission.
- (2) Any person who contravenes subsection (1) commits an offence and is liable-
  - (a) on summary conviction, to a fine at level 2 and to imprisonment for 3 months; and
  - (b) on conviction on indictment, to a fine at level 4 and to imprisonment for 6 months.

Part:	5	<b>Recommendations of Commission</b>	E.R. 2 of 2012	02/08/2012
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Section:	17	<b>Definitions</b>	E.R. 2 of 2012	02/08/2012
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- (1) In this Part-
 

**election** (選舉) means a general election or an ordinary election; (Replaced 8 of 1999 s. 89)

**geographical constituency** (地方選區) in relation to an election means a geographical area having separate representation (whether by one or more members) in the Legislative Council;

**population quota** (標準人口基數), in relation to-
 
  - (a) a general election, means the total population of Hong Kong divided by the total number of members to be returned for all the geographical constituencies in that election;
  - (b) an ordinary election, means the total population of Hong Kong divided by the total number of elected members to be returned in that election. (Replaced 8 of 1999 s. 89)
- (2) Any reference to the population of Hong Kong in this Part shall be construed as a reference to the population of Hong Kong as estimated by the Commission under section 20(6).

Section:	18	<b>Report on boundaries</b>	E.R. 2 of 2012	02/08/2012
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- (1) The Commission shall submit to the Chief Executive, in accordance with this section, in relation to-
  - (a) a general election, a report containing recommendations for the delineation of geographical constituencies and the name proposed by the Commission for each constituency; and
  - (b) an ordinary election, a report containing recommendations as to the delineation of District Council constituencies and the name proposed by the Commission for each constituency. (Replaced 8 of 1999 s. 89)
- (1A) A report under subsection (1) must contain-
  - (a) the reasons for the recommendations; and
  - (b) without limiting the generality of paragraph (a), where the Commission departs from the strict application of section 20(1)(b) or (d) pursuant to section 20(5), an explanation relating to such departure; and
  - (c) where the Commission receives representations under section 19(4), the representations, or a summary of them, as the Commission considers appropriate in each case. (Added 8 of 1999 s. 89)
- (2) The recommendations under subsection (1) shall be made with reference to a map or maps-
  - (a) showing the demarcation of the boundaries of each proposed geographical constituency or District Council constituency, as the case may be; (Amended 8 of 1999 s. 89)
  - (b) supplemented, where the Commission considers it appropriate, by a description, whether by reference to the map or maps, or otherwise of any boundary shown on such map or maps, which shall be submitted with the report.
- (3) A report referred to in subsection (1) shall be submitted-
  - (a) in respect of-
    - (i) the general election for the second term of office of the Legislative Council, not later than 31 October 1999; and
    - (ii) subsequent general elections, at intervals of not more than 36 months from the preceding general election; and (Replaced 48 of 1999 s. 52)
  - (b) in respect of-
    - (i) the first ordinary election to be held under the District Councils Ordinance (Cap 547), not later than 31 May 1999; and
    - (ii) subsequent ordinary elections, at intervals of not more than 36 months from the preceding ordinary election. (Replaced 8 of 1999 s. 89)
- (4) The Chief Executive may extend the period referred to in subsection (3)(a)(i) or (b)(i), or in any particular case, the period referred to in subsection (3)(a)(ii) or (b)(ii). (Amended 8 of 1999 s. 89; 48 of 1999 s. 52)

Section:	19	<b>Provisional recommendations</b>	E.R. 2 of 2012	02/08/2012
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- (1) The Commission shall, when it has provisionally determined the recommendations it proposes to make for the purposes of section 18 in respect of a general election or an ordinary election, and before it submits a report under that section in respect of the election concerned, cause a map or maps-
  - (a) showing the delineation of the proposed geographical constituencies or the District Council constituencies, as may be appropriate, and the demarcation of their boundaries; and
  - (b) with a name assigned to each proposed geographical constituency or District Council constituency, as the case may be, to be exhibited, for a period of not less than 30 days, for inspection by the public at reasonable hours and free of charge, at any place considered appropriate by the Commission for such purpose. (Amended 8 of 1999 s. 89)
- (2) The Commission shall give notice in the Gazette of the place and hours at which the map or maps may be so inspected and specify in the notice an address to send any representations in writing for the purposes of this section.
- (3) The Commission may, where it considers it appropriate, make available for inspection under subsection (1), a description of any boundary shown on a map or maps exhibited under that subsection.
- (4) Any person may make representations to the Commission regarding the proposed recommendations within the period of 30 days beginning on the date a notice under subsection (2) is published in the Gazette.
- (5) Representations for the purposes of this section may be made in writing (including by facsimile transmission) or at any meeting held under subsection (6).
- (6) The Commission may hold meetings for the purpose of receiving representations under this section and any such

meeting shall be open to the public except where the Commission considers it desirable that the meeting should not be open to the public.

(7) The Commission-

- (a) shall notify the public in such manner as it thinks fit, of the date, time and place of a meeting to be held under subsection (6); and
- (b) may adopt such procedures as it thinks fit in respect of such a meeting.

(8) The Commission shall have regard to any representations made under this section when making recommendations under section 18.

(9) In their application to the provisional recommendations made for the first ordinary election to be held under the District Councils Ordinance (Cap 547), subsections (1) and (4) shall be read as if- (Amended 8 of 1999 s. 89)

- (a) a reference to 14 days were substituted for the reference to 30 days in subsection (1); and
- (b) a reference to not less than 14 days were substituted for the reference to 30 days in subsection (4).

Section:	20	<b>Criteria for making recommendations</b>	E.R. 2 of 2012	02/08/2012
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- (1) In making recommendations for the purposes of this Part, the Commission shall-
  - (a) ensure that the extent of each proposed geographical constituency is such that the population in that constituency is as near as is practicable to the number which results (*the resulting number*) when the population quota is multiplied by the number of members to be returned to the Legislative Council by that geographical constituency pursuant to any electoral law;
  - (b) where it is not practicable to comply with paragraph (a) in respect of a proposed geographical constituency, ensure that the extent of the constituency is such that the population in that constituency does not exceed or fall short of the resulting number applicable to that constituency, by more than 15% thereof;
  - (c) ensure that the extent of each proposed District Council constituency is such that the population in that constituency is as near the population quota as practicable; (Added 8 of 1999 s. 89)
  - (d) where it is not practicable to comply with paragraph (c) in respect of a proposed District Council constituency, ensure that the extent of the proposed constituency is such that the population in that constituency does not exceed or fall short of the population quota, by more than 25% thereof. (Added 8 of 1999 s. 89)
- (2) In making such recommendations the Commission shall ensure that each proposed geographical constituency is constituted by 2 or more contiguous whole District Council constituencies.
- (3) In making such recommendations the Commission shall have regard to-
  - (a) community identities and the preservation of local ties; and
  - (b) physical features such as size, shape, accessibility and development of the relevant area or any part thereof.
- (4) In making such recommendations in relation to a general election the Commission shall have regard to-
  - (a) existing boundaries of Districts; and
  - (b) existing boundaries of geographical constituencies. (Replaced 78 of 1999 s. 7)
- (4A) Subject to subsection (4B), in making such recommendations in relation to an ordinary election, the Commission must follow the existing boundaries of Districts and the existing number of members to be elected to a District Council as specified in or under the District Councils Ordinance (Cap 547). (Added 8 of 1999 s. 89)
- (4B) If the Chief Executive in Council makes any order under section 8 of the District Councils Ordinance (Cap 547)-
  - (a) not later than 12 months before the deadline for submitting a report for the ordinary election to which the recommendations relate; and
  - (b) which is applicable in relation to that ordinary election; and
  - (c) for the purpose of declaring Districts or specifying the number of members to be elected to a District Council,

the Commission must, in making such recommendations in relation to that ordinary election, follow the boundaries of the Districts as declared in the relevant order and the number of members to be elected as specified in the relevant order. (Added 8 of 1999 s. 89)
- (5) The Commission may depart from the strict application of subsection (1) only where it appears that a consideration referred to in subsection (3) renders such a departure necessary or desirable.
- (6) The Commission shall, for the purposes of subsection (1)-
  - (a) endeavour to estimate the total population of Hong Kong or any proposed constituency, as the case may be, in the year in which the election to which the recommendations relate, is to be held; and
  - (b) if it is not practicable to comply with paragraph (a), estimate the population of Hong Kong, the

geographical constituency or the District Council constituency, as the case may be, having regard to the available information which is the best possible in the circumstances for the purpose of making recommendations.

(7) In this section-

**District** (地方行政區) has the meaning assigned to it by the District Councils Ordinance (Cap 547). (Replaced 8 of 1999 s. 89)

(Amended 8 of 1999 s. 89; 78 of 1999 s. 7)

Section:	21	<b>Consideration of report</b>	E.R. 2 of 2012	02/08/2012
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A report or maps received by the Chief Executive under section 18 or 22(2) shall be considered by the Chief Executive in Council as soon as practicable after such receipt.

Section:	22	<b>Return of report</b>	E.R. 2 of 2012	02/08/2012
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- (1) The Chief Executive may, after the Chief Executive in Council has considered a report submitted under this Part, return the report for further consideration by the Commission of any recommendation contained in it.
- (2) Where a report is returned under this section, the Commission shall make another report to the Chief Executive within such period as is specified by the Chief Executive.
- (3) The Chief Executive may return under this section the first report submitted under a particular election or a further report submitted following the return of a report.
- (4) Section 18 shall apply in relation to a report submitted under subsection (2) subject to necessary modifications and as the circumstances may require.
- (5) In this section, any reference to the return of a report includes a reference to the return of a part of a report or a map or maps submitted with a report, and this section shall be construed and have effect accordingly.

Section:	23	<b>Tabling of report</b>	E.R. 2 of 2012	02/08/2012
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- (1) The Chief Executive shall cause a report, map or maps submitted under section 18 or 22(2) to be laid on the table of the Legislative Council within 30 days of the submission thereof. (Amended 8 of 1999 s. 89)
- (2) If any period referred to in subsection (1) would, but for this subsection, expire after the end of a session or a dissolution of the Legislative Council, and before the day of its second meeting in the next following session, that period shall be extended and expire on the day after such second meeting.

Section:	24	<b>(Omitted as spent—E.R. 2 of 2012)</b>	E.R. 2 of 2012	02/08/2012
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Schedule:	1		E.R. 2 of 2012	02/08/2012
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[section 3]

## Part 1

In this Schedule-

**former Ordinance** (先前條例) means the Ordinance known immediately before 1 July 1997 as the Boundary and Election Commission Ordinance (Cap 432).

(Amended 48 of 1999 s. 53)

## Part 2

The persons disqualified under section 3(5)(e) of this Ordinance from appointment or holding office as a member of the Commission are-

- (a) a person who is an employee or servant of-
  - (i) the Legislative Council or a committee of any such Council; or (Amended 48 of 1999 s. 53; 78

of 1999 s. 7)

(ii)-(iii) (Repealed 78 of 1999 s. 7)

(iv) a member of any political body; and

(b) persons who would have been disqualified from nomination as a candidate at an election within the meaning of the Legislative Council Ordinance (Cap 542) under the following sections of that Ordinance-

- (i) section 39(1)(a)(ii) (except persons specified in paragraph (d) of the definition of **prescribed public officer** in section 39(5) of that Ordinance);
- (ii) section 39(1)(a)(iii);
- (iii) section 39(1)(b);
- (iv) section 39(1)(c);
- (v) section 39(1)(d);
- (vi) section 39(1)(e);
- (vii) section 39(1)(g);
- (viii) section 39(1)(i);
- (ix) section 39(2);
- (x) section 39(3). (Amended 48 of 1999 s. 53)

### Part 3

A person disqualified under section 3(5)(k)(xi) of this Ordinance is a person who would have been disqualified from appointment or holding office under any of the following sections of the former Ordinance-

- (a) section 3(5)(c)(i);
- (b) section 3(5)(c)(ii);
- (c) section 3(5)(c)(iii);
- (d) section 3(5)(c)(iv);
- (e) section 3(5)(c)(v).

Schedule:	2	<b>Provisions Applicable to Commission</b>	E.R. 2 of 2012	02/08/2012
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[sections 2 & 3]

1. (1) The Chairman or other member of the Commission shall, subject to this section-
  - (a) hold and vacate office in accordance with his terms of appointment; and
  - (b) on ceasing to hold office, be eligible for reappointment.
- (2) The Chairman or other member of the Commission may at any time resign his office by notice in writing to the Chief Executive, and the resignation shall take effect-
  - (a) from the date specified in the notice or on receipt of the notice by the Chief Executive, whichever is later; or
  - (b) if no date is specified, on receipt of the notice by the Chief Executive.
- (3) If the Chairman or other member of the Commission-
  - (a) is absent from Hong Kong for more than 6 months consecutively; or
  - (b) is in the opinion of the Chief Executive-
    - (i) incapacitated due to physical or mental illness; or
    - (ii) otherwise unable or unfit to discharge the functions of his office,
 the Chief Executive may by notice in writing to him remove him from office.
- (4) Where the office of the Chairman or other member becomes vacant, the Chief Executive shall, as soon as practicable by notice published in the Gazette, appoint another person in his place for a period specified by the Chief Executive at the time of appointment.
- (5) If the Chairman or other member, due to absence from Hong Kong or any other reason, is unable to perform the function of his office as the Chairman or other member for any period, the Chief Executive may appoint, in the case of-
  - (a) the Chairman, another member of the Commission;
  - (b) any other member, another person,
 to act in the place of the Chairman or the other member, as the case may be, for that period.

- (6) Section 3(4), (5) and (6) of this Ordinance shall apply to an appointment or reappointment under subparagraph (1) or (4) and section 3(4) and (5) of this Ordinance shall apply to an appointment under subparagraph (5).
- (7) Where the Chairman or other member-
  - (a) resigns from office, the Chief Executive shall give notice in the Gazette of the resignation as soon as practicable after receipt by the Chief Executive of the relevant notice under subparagraph (2);
  - (b) ceases to hold office due to disqualification or removal, the Chief Executive shall give notice thereof in the Gazette as soon as practicable.
- (8) Where a member of the Commission (including the Chairman) ceases to hold office due to disqualification pursuant to section 3(5)(f) or 3(5)(k)(xi) of this Ordinance, the cessation shall be deemed to operate from the date of the notice under subparagraph (7).

2. (1) Subject to subparagraph (2), meetings of the Commission shall be held at such times and places as may be determined by the Chairman.

(2) The Commission shall hold a meeting at least once every 12 months.

(3) Subject to subparagraph (6), at any meeting of the Commission the Chairman and 1 member shall form a quorum.

(4) At any meeting of the Commission-
 

- (a) the Chairman shall preside;
- (b) any question shall be decided by the majority of the votes of those present and voting; and
- (c) in case of an equality of votes, the Chairman shall have a casting vote.

(5) Without prejudice to section 9 of this Ordinance, a person who is not a member may attend a meeting of the Commission with the consent of the Chairman or if so provided in the standing orders made under section 5 of this Ordinance, but such a person or the Chief Electoral Officer and his representative attending a meeting under section 9 of this Ordinance shall not be entitled to vote at a meeting of the Commission.

(6) Any decision relating to-
 

- (a) the issue of guidelines under section 6(1) of this Ordinance; and
- (b) the making of-
  - (i) regulations under section 7 of this Ordinance;
  - (ii) a report for the purposes of section 8 of this Ordinance; or
  - (iii) recommendations for the purposes of Part 5 of this Ordinance (including provisional recommendations),

 shall be made at a meeting of all the members of the Commission (excluding any member who is unable to perform the functions of his office as described in paragraph 1(5), for the time being).

(7) The Commission may act notwithstanding one vacancy in the membership and its proceedings shall not be invalidated by reason of a defect in the appointment or qualification of a member.

(8) Subject to this Ordinance and any standing orders made under section 5 of this Ordinance the Commission may determine and regulate its own procedure.

(Amended E.R. 2 of 2012)