

July 21, 2021

CONSULTATION DRAFT
MUNICIPAL GOVERNMENT ACT
MUNICIPAL ELECTION REGULATIONS
AMENDMENT

Pursuant to section 261 of the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1, Council made the following regulations:

1. Section 5 of the *Municipal Government Act* Municipal Election Regulations (EC749/17) is amended by the addition of the following after subsection (1):

(1.1) The chief administrative officer of the municipality shall give notice to the Minister within 10 days that a council member's office has become vacant pursuant to section 108 of the Act. Notice to Minister

2. Section 10 of the regulations is amended

(a) in the words preceding clause (a), by the deletion of the words "fourth Tuesday" and substitution of the words "fourth Wednesday"; and

(b) in clause (a), by the deletion of the words "in a convenient location".

3. Clause 11(a) of the regulations is amended by the deletion of the words "at least 2 days each week for a minimum of 3 hours each day between the hours of" and the substitution of the words "with hours to be determined by the municipal electoral officer between".

4. (1) Subsection 12(2) of the regulations is amended by the addition of the words "for that municipality" after the words "as a returning officer".

(2) Section 12 of the regulations is amended by the addition of the following after subsection (2):

(2.1) A candidate in an election is not eligible to be appointed, and shall not serve, as an election official in the municipality in which the candidate has been nominated. Prohibition - candidates

5. Section 13 of the regulations is amended

(a) in subsection (1), by the deletion of the words “his or her” and the substitution of the words “the returning officer’s”;

(b) in subsection (4), by the deletion of the words “his or her” and the substitution of the words “the returning officer’s”; and

(c) in clause (5)(b), by the deletion of the words “his or her” and the substitution of the words “the returning officer’s”.

6. Section 16 of the regulations is amended

(a) in subsection (1), by the deletion of the words “his or her” and the substitution of the words “the returning officer’s”; and

(b) in subsection (2), by the deletion of the words “his or her” and the substitution of the words “the election official’s”.

7. Clause 17(b) of the regulations is amended by the deletion of the words “him or her” and the substitution of the words “the election official”.

8. (1) Subsection 18(1) of the regulations is revoked and the following substituted:

Qualifications of
election officials

18. (1) No individual shall be appointed as a returning officer, election clerk, enumeration officer, deputy returning officer, poll clerk, information officer or other election official unless the individual

(a) is a Canadian citizen or is legally entitled to work in Canada;

(b) is at least 18 years of age; and

(c) has been ordinarily resident in the province for at least the six-month period immediately preceding the appointment.

(2) Section 18 of the regulations is amended by the addition of the following after subsection (2):

Prohibition - person
closely connected to
candidate

(3) A person closely connected to a candidate in an election is not eligible to be appointed, and shall not serve, as an election official in the municipality in which the candidate has been nominated.

Application

(4) For the purposes of subsection (2), the definition of “person closely connected” in clause 1(w) of the Act also applies, with any necessary changes, to persons with the defined relationships to a candidate in an election.

9. Subsection 22(4) of the regulations is amended by the deletion of the words “Until 11:59 a.m. on the 13th day before election day, the” and the substitution of the word “The”.

10. Section 23 of the regulations is amended by the addition of the following after subsection (5):

- (6) Subsections (1), (3) and (5) do not apply to an election Exemption
- (a) conducted by Elections PEI as the municipal electoral officer for a municipality, in which case the official list is the official list of electors established pursuant to section 62 of the *Election Act* R.S.P.E.I. 1988, Cap. E-1.1, or that portion of the list that applies to the municipality; and
 - (b) in a municipality that specifies in its election bylaw the use of a web-based election system, pursuant to section 41 of the Act.

11. (1) Subsection 25(1) of the regulations is amended

(a) by the revocation of clause (d) and the substitution of the following:

(d) instructions encouraging all electors to confirm their eligibility to vote prior to election day; and

(b) in clause(e), by the deletion of the words “and the returning officer”.

(2) Subsection 25(2) of the regulations is revoked and the following substituted:

- (2) The notice required under subsection (1) shall be Publication of
notice
- (a) published by at least one print method that the municipal electoral officer reasonably believes is likely to bring the notice to the attention of a majority of persons residing in the municipality;
 - (b) published by at least one electronic method that the municipal electoral officer reasonably believes is likely to bring the notice to the attention of a majority of persons residing in the municipality; and
 - (c) posted at the election office and at the municipal office designated pursuant to subsection 85(1) of the Act.

12. Section 26 of the regulations is amended

(a) in subsection (1), by the addition of the words “for election in that municipality” after the words “nominate a candidate”; and

(b) in clause (3)(a), by the deletion of the words “at a time specified for the receipt of nominations” and the substitution of the words “at a time and in the manner specified by the municipal electoral officer”.

13. Subsection 29(1) of the regulations is revoked and the following substituted:

Receipt of
nomination paper

- 29.** (1) The municipal electoral officer or returning officer shall
- (a) receive each completed nomination paper;
 - (b) sign the nomination paper to show it has been accepted; and
 - (c) where a municipal bylaw requires the candidate to pay a deposit,
 - (i) sign the receipt of the deposit on the nomination paper, and
 - (ii) provide the deposit to the chief administrative officer, who shall pay it into the bank account of the municipality.

14. Clause 34(b) of the regulations is revoked and the following substituted:

(b) as soon as practicable, by at least one print method that the municipal electoral officer reasonably believes is likely to bring the notice to the attention of a majority of persons residing in the municipality.

15. Section 37 of the regulations is amended

(a) by the revocation of clauses (2)(a) and (b) and the substitution of the following:

- (a) published by at least one print method that the municipal electoral officer reasonably believes is likely to bring the notice to the attention of a majority of persons residing in the municipality;
- (b) published by at least one electronic method that the municipal electoral officer reasonably believes is likely to bring the notice to the attention of a majority of persons residing in the municipality;

(b) by the revocation of subsection (3).

16. Subsection 38(1) of the regulations is amended by the deletion of the words “shall order the necessary ballot papers be prepared” and the substitution of the words “shall arrange to have the necessary ballot papers prepared”.

17. Clause 44(1)(b) of the regulations is amended by the deletion of the words “a declaration” and the substitution of the words “a statutory declaration”.

18. Subsection 47(3) of the regulations is amended by the deletion of the words “At the close of the voting on election day, at a time and place

as directed” and the substitution of the words “At a time and place on election day as directed”.

19. (1) Subsection 48(3) of the regulations is revoked and the following substituted:

(3) The municipal electoral officer shall be responsible for administering the mail-in ballot process.

Municipal electoral officer's responsibility

(2) Subsection 48(6) of the regulations is revoked and the following substituted:

(6) The municipal electoral officer shall, immediately before the opening of the polling stations, provide a list of the names of persons who applied for and were issued mail-in ballots to the poll clerk at each polling station.

Information to poll clerk

20. Section 49 of the regulations is amended by the deletion of the words “to him or her” and the substitution of the words “to the deputy returning officer”.

21. Section 50 of the regulations is amended

(a) by renumbering it as subsection 50(1); and

(b) by the addition of the following after subsection (1):

(2) The persons referred to in subsection (1) shall protect the confidentiality of the voting process at all times.

Duty to protect confidentiality

22. The regulations are amended by the addition of the following after section 50:

50.1 No person shall, during the hours of voting on election day, within 200 feet of a polling station, support or discredit a candidate by speech or action, or attempt to do so, and without limiting the foregoing, no person shall

Restriction - supporting, discrediting candidates on election day

- (a) supply, carry or use a loudspeaker, public address system, flag or banner for the purpose of supporting or discrediting a candidate;
- (b) post or display literature or an emblem, ribbon, flag, banner, card, bill, poster or device that supports or discredits a candidate; or
- (c) organize or participate in a parade or demonstration that supports or discredits a candidate.

23. Subsection 55(2) of the regulations is revoked and the following substituted:

Duty of deputy returning officer

(2) On receiving the folded ballot paper from the elector, the deputy returning officer shall, without unfolding it, ascertain by examination of the initials that it is the same ballot paper that was given to the elector and, if it is, the deputy returning officer shall,

(a) where requested to do so by the elector, return the folded ballot paper to the elector who shall immediately place it in the ballot box; or

(b) where the elector has not requested the return of the folded ballot paper, deposit it in the ballot box in full view of the elector and all others present.

24. Section 61 of the regulations is revoked and the following substituted:

Voting after closing hours of polling station

61. At the hour for the closing of the polling station, the deputy returning officer shall keep the polling station open a sufficient time to provide all those electors who are in or actually present at and awaiting admission to the polling station time to vote.

25. (1) Subsection 64(2) of the regulations is amended

(a) in clause (a), by the deletion of the words “write his or her initials across the seal” and the substitution of the words “initial the seal”; and

(b) by the revocation of clause (d) and the substitution of the following:

- (d) count the number of unused ballot papers and
 - (i) place the unused ballot papers in the envelope for unused ballot papers,
 - (ii) seal the envelope and initial it,
 - (iii) record the number of unused ballot papers on the front of the envelope, and
 - (iv) record the number of unused ballot papers in the statement of the vote.

(2) Section 64 of the regulations is amended by the addition of the following after subsection (7):

Prohibition - cell phones, etc.

(8) No person, other than an election official, shall have a cell phone or other electronic communication device in the person’s possession while the person is in the counting area during the counting process.

Restriction - municipal electoral officer

(9) Where the municipal electoral officer is present at a polling station at the time for counting the ballot papers, the municipal electoral officer shall not participate in the counting process.

26. Subsection 65(1) of the regulations is amended by the addition of the words “, in its entirety,” after the words “shall reject”.

27. Section 67 of the regulations is revoked and the following substituted:

67. When, in the course of counting the ballot papers, the deputy returning officer finds a ballot that has not been initialled, the deputy returning officer shall, if satisfied that the ballot is one that was supplied by the deputy returning officer, Ballot without initials

- (a) initial the ballot paper; and
- (b) subject to section 65, count the vote on the ballot paper.

28. Subsection 68(4) of the regulations is amended by the deletion of the words “statement of results of voting” and the substitution of the words “statement of the vote”.

29. Section 69 of the regulations is amended

(a) in subsection (1), by the deletion of the words “in his or her care” and the substitution of the words “in the care of the returning officer”; and

(b) in subsection (2), by the deletion of the words “to him or her” and the substitution of the words “to the returning officer”.

30. Section 75 of the regulations is amended

(a) in clause (1)(a), by the deletion of the words “polling division” and the substitution of the words “polling station”; and

(b) in subsection (3), by the deletion of the words “first Friday following” and the substitution of the words “fourth day after”.

31. Subsection 76(1) of the regulations is amended by the deletion of the words “the ballots” and the substitution of the words “all ballots cast”.

32. Clause 88(a) of the regulations is amended by the deletion of the words “for his or her services” and the substitution of the words “for services”.

33. These regulations come into force on

EXPLANATORY NOTES

SECTION 1 amends section 5 of the Municipal Election Regulations (EC749/17) to add a requirement for the chief administrative officer of a municipality to notify the Minister of a vacancy on the council of the municipality within 10 days.

SECTION 2 amends section 10 of the regulations to change the date on which the municipal electoral officer must open the election office in a municipality from the fourth Tuesday to the fourth Wednesday before election day, to align with the requirements of section 43 of the Act.

SECTION 3 amends clause 11(a) of the regulations to allow the municipal electoral officer to determine the hours during which the election office shall be open.

SECTION 4 amends subsection 12(2) of the regulations to clarify that the chief administrative officer of a municipality is not eligible to be appointed as a returning officer for that municipality. It also amends section 12 by adding new subsections (2.1), (2.2) and (2.3). Subsection (2.1) provides that a candidate in an election is not eligible to be appointed as an election official in the municipality where the candidate has been nominated. Subsection (2.2) provides that a person closely connected to a candidate is not eligible to be appointed as an election official in the municipality where the candidate has been nominated. Subsection (2.3) clarifies how the term “closely connected”, which is defined in the Act, applies to a candidate and the persons in specified relationships to the candidate.

SECTION 5 amends section 13 of the regulations to substitute gender-neutral language for the words “his or her” in subsections (1) and (4) and in clause (5)(b).

SECTION 6 amends section 16 of the regulations to substitute gender-neutral language for the words “his or her” in subsections (1) and (2).

SECTION 7 amends clause 17(b) of the regulations to substitute gender-neutral language for the words “him or her”.

SECTION 8 revokes subsection 18(1) of the regulations and substitutes a new subsection 18(1) to clarify the qualifications required of election officials.

SECTION 9 amends subsection 22(4) of the regulations to remove an unnecessary deadline for revisions to the preliminary list of electors. Where a preliminary list is used, it will be revised as necessary.

SECTION 10 amends section 23 of the regulations to make an exception to the rules for creating, revising and distributing the official list of electors where the election is being administered by Elections PEI as the municipal electoral officer or is being conducted in a municipality that has specified in its election bylaw the use of a web-based election system, pursuant to section 41 of the Act.

SECTION 11 amends section 25 of the regulations to simplify the requirements for the publication of the notice of nomination proceedings required under subsection 25(1).

SECTION 12 amends subsection 26(1) of the regulations to clarify that the electors may nominate a candidate only in their own municipality. The section also amends clause 26(3)(a) of the regulations to provide that the nomination paper must be filed at a time and in the manner specified by the municipal electoral officer.

SECTION 13 revokes subsection 29(1) of the regulations and substitutes a new subsection 29(1) to simplify the duties of the municipal electoral officer or returning officer on receipt of a nomination paper.

SECTION 14 amends clause 34(b) of the regulations to simplify the requirements for publishing a notice of extension of the nomination period.

SECTION 15 amends subsection 37(2) of the regulations to simplify the requirements for publication of the notice of election information required pursuant to subsection 37(1). The section also revokes subsection 37(3), which created an exception from the requirements for specified municipalities. This exception is no longer needed.

SECTION 16 amends subsection 38(1) of the regulations to clarify the duty of the municipal electoral officer to arrange to have the ballot papers prepared.

SECTION 17 amends clause 44(1)(b) of the regulations to clarify that the declaration mentioned there is a statutory declaration.

SECTION 18 amends subsection 47(3) of the regulations to align the counting process for advance poll ballots with the requirements in the Act.

SECTION 19 revokes subsection 48(3) of the regulations and substitutes a new subsection 48(3) to provide that the municipal electoral officer shall administer the mail-in ballot process. The section also revokes subsection 48(6) and substitutes a new subsection (6) that provides that the list of names of persons who applied for and were issued mail-in ballots shall be provided to the poll clerk at each polling station immediately before the opening of the polling station.

SECTION 20 amends section 49 of the regulations to substitute gender-neutral language for the words “to him or her”.

SECTION 21 amends section 50 of the regulations to renumber it as subsection 50(1) and to add a new subsection (2) that requires those persons listed in subsection (1) to protect the confidentiality of the voting process at all times.

SECTION 22 amends the regulations to add a new section 50.1 that establishes rules prohibiting the specified activities within 200 feet of a polling station during voting hours on election day.

SECTION 23 revokes subsection 55(2) of the regulations and substitutes a new subsection 55(2) that clarifies the duties of the deputy returning officer under that subsection.

SECTION 24 revokes section 61 of the regulations and substitutes a new section 61 that simplifies the rules respecting voting after a polling station is officially closed.

SECTION 25 amends section 64 of the regulations to substitute gender-neutral language for “his or her” in clause (2)(a), to clarify the process for counting of unused ballot papers in clause (2)(d), and to add 2 new subsections. Subsection (8) provides that no person, other than an election official, shall have a cell phone or other electronic communication device in the counting area during the counting process. Subsection (9) provides that where the municipal electoral officer is present during the counting, the municipal electoral officer shall not participate in the process.

SECTION 26 amends subsection 65(1) of the regulations to clarify that a ballot paper that has been spoiled in one of the ways specified in that subsection must be rejected in its entirety.

SECTION 27 revokes section 67 of the regulations and substitutes a new section 67 to eliminate references to counterfoils, which are no longer

part of the ballot paper, in the former subsection (1), and to substitute gender-neutral language for “his or her” and “him or her” in the former subsection 67(2).

SECTION 28 amends subsection 68(4) of the regulations to correct a reference to the “statement of results of voting”, which should be “statement of the vote”.

SECTION 29 amends section 69 of the regulations to substitute gender-neutral language for the words “his or her” in subsection (1) and “him or her” in subsection (2).

SECTION 30 amends clause 75(1)(a) of the regulations to correct a reference to “polling division”, which should be “polling station”, and also amends subsection 75(3) to correct a reference to “the first Friday following”, which should be the “fourth day after” the election, to align with the requirements of the Act respecting a request for a recount.

SECTION 31 amends subsection 76(1) of the regulations to clarify that a recount includes all ballots cast, not only valid ballots.

SECTION 32 amends clause 88(a) of the regulations to substitute gender-neutral language for the words “his or her”.

SECTION 33 provides for the commencement of the regulations.