

立法會
Legislative Council

LC Paper No. LS69/18-19

**Paper for the House Committee Meeting
on 10 May 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 3 May 2019**

Tabling in LegCo : Council meeting of 8 May 2019

Amendment to be made by : Council meeting of 5 June 2019 (or that of
26 June 2019 if extended by resolution)

**PART I SUBSIDIARY LEGISLATION RELATING TO DISTRICT
COUNCIL ELECTION**

**District Councils Ordinance (Amendment of Schedule 7)
Order 2019** (L.N. 64)

**Maximum Amount of Election Expenses (District Council
Election) (Amendment) Regulation 2019** (L.N. 65)

L.N. 64

Part VA of the District Councils Ordinance (Cap. 547) provides for a financial assistance scheme in respect of the election expenses incurred by candidates at a District Council ("DC") election. Pursuant to sections 60C and 60D under Part VA of Cap. 547, a candidate who is elected as an elected member, or who is not elected but who is not a disqualified candidate and obtains at least 5% of the total number of valid votes cast in the constituency concerned, in a DC election is eligible for financial assistance, which would be the lowest of the following:

- (a) the amount obtained by multiplying the specified rate by the total number of valid votes cast for the candidate (if the election is contested) or 50% of the number of registered electors for the constituency concerned (if the election is uncontested);

- (b) 50% of the maximum amount of election expenses¹ that can be incurred by or on behalf of the candidate at a DC election under section 3 of the Maximum Amount of Election Expenses (District Council Election) Regulation (Cap. 554C); or
- (c) the declared election expenses of the candidate.

2. The rate of financial assistance payable to candidates for DC elections under Part VA of Cap. 547 is specified in Schedule 7 to Cap. 547. The current rate is \$14, which was fixed in 2015 (L.N. 49 of 2015).

3. L.N. 64 is made by the Chief Executive ("CE") in Council under section 82 of Cap. 547 to amend Schedule 7 to Cap. 547 to provide that the rate of financial assistance:

- (a) remains at \$14 for an election of a member for the term of office of a DC ending on 31 December 2019; and
- (b) increases from \$14 to \$15 for an election of a member for any subsequent term of office of a DC.

L.N. 65

4. Section 45 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) provides that CE in Council may make regulations prescribing the maximum amount of election expenses that can be incurred by or on behalf of a candidate at a DC election (i.e. the election expenses limit ("EEL")). The current EEL prescribed in section 3 of Cap. 554C is \$63,100, which was fixed in 2015 (L.N. 50 of 2015).

5. L.N. 65 is made by CE in Council under section 45 of Cap. 554 to amend section 3 of Cap. 554C to provide that EEL:

- (a) remains at \$63,100 for an election of a member for the term of office of a DC ending on 31 December 2019; and

¹ Under section 2 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), election expenses, in relation to a candidate or group of candidates at an election, means expenses incurred or to be incurred, before, during or after the election period, by or on behalf of the candidate or group for the purpose of (a) promoting the election of the candidate or group; or (b) prejudicing the election of another candidate or group, and includes the value of election donations consisting of goods and services used for that purpose.

- (b) increases from \$63,100 to \$68,800 for an election of a member for any subsequent term of office of a DC.

6. According to paragraphs 6 and 10 of the Legislative Council ("LegCo") Brief (File Ref: CMAB C2/8) issued by the Constitutional and Mainland Affairs Bureau on 30 April 2019, the adjustments are made taking into account the cumulative increase in the Composite Consumer Price Index from 2016 to 2019 which is expected to be 9.1%. Members may refer to the LegCo Brief for further details of the increases.

7. As advised by the Clerk to the Panel on Constitutional Affairs, the Panel was consulted on the proposed increases in the rate of financial assistance for candidates for DC elections and EEL for DC elections at its meeting on 17 December 2018. While members in general expressed support for the proposal to increase the rate of financial assistance from \$14 to \$15 per vote, some members considered that the Administration should also review the calculation method of the amount of financial assistance payable to each eligible candidate, which was at present capped at 50% of EEL. Members in general also expressed support for the proposed increase in EEL from \$63,100 to \$69,000 (rounded off to the nearest hundred dollars) but some members considered that there was room for a larger increase.

8. L.N. 64 and L.N. 65 come into operation on 28 June 2019.

PART II SUBSIDIARY LEGISLATION RELATING TO THE CENTRAL MILITARY DOCK

Protected Places (Amendment) Order 2019 (L.N. 66)

Protected Places (Safety) (Authorized Guards) (Amendment) Order 2019 (L.N. 67)

Military Installations Closed Areas (Amendment) Order 2019 (L.N. 68)

Shipping and Port Control (Amendment) Regulation 2019 (L.N. 69)

Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2019 (L.N. 70)

9. L.N. 66 to L.N. 70 are subsidiary legislation relating to the Central Military Dock ("CMD") and the regulation and control of two marine restricted areas at the waters off CMD. The relevant amendments are summarized below.

L.N. 66 and L.N. 67

10. Under section 2 of the Protected Places (Safety) Ordinance (Cap. 260), CE may by an order declare any premises to be a protected place. The Schedule to the Protected Places Order (Cap. 260A) sets out the locations of the protected places. Under section 3 of Cap. 260, CE may by order authorize any person to act as an authorized guard in, at or over a protected place. The duties of such authorized guards are set out in section 4 of Cap. 260. These include arresting person whom that authorized guard reasonably suspects of having committed an offence against Cap. 260.

11. The Protected Places (Safety) (Authorized Guards) Order (Cap. 260C) sets out the authorized guards in respect of different protected places. Section 8 of Cap. 260 provides, among other things, that any person who is unauthorized to enter a protected place fails to leave the immediate vicinity thereof when requested to do so by an authorized guard or the police shall be guilty of an offence and shall be liable on summary conviction to a fine at level 1 (i.e. \$2,000) and to imprisonment for six months.

12. L.N. 66, which is made by CE under section 2 of Cap. 260 after consultation with the Executive Council, adds CMD to the Schedule to Cap. 260A to declare CMD to be a protected place.

13. L.N. 67 is made by CE under section 3 of Cap. 260 after consultation with the Executive Council to amend Cap. 260C. It provides for the persons who are authorized to act as authorized guards in respect of CMD. These persons are:

- (a) holders of permits under the Security and Guarding Services Ordinance (Cap. 460) that are valid for guarding any property at CMD or preventing or detecting the occurrence of any offence at CMD, or both;
- (b) employed by a company engaged by the Hong Kong Garrison of the Chinese People's Liberation Army ("the Garrison"); and
- (c) assigned by the Garrison, or the company, to guard CMD.

L.N. 68

14. L.N. 68 is made by CE under section 36(1) of the Public Order Ordinance (Cap. 245) after consultation with the Executive Council. It amends the Military Installations Closed Areas Order (Cap. 245B) by adding the "CMD building areas" to the First Schedule to Cap. 245B to declare the areas of four

buildings in the CMD land area, which will not be open due to defence operational need, to be closed areas.

15. The effect of L.N. 68 is that no person shall enter or leave the areas of the four buildings in the CMD land area without a permit issued under section 37 of Cap. 245 or permission granted under section 38A of Cap. 245.

16. According to paragraph 8 of the LegCo Brief (File Ref: SBCR 5/1486/98) issued by the Security Bureau on 3 May 2019, CMD should have been delimited as a "closed area" under Cap. 245B as in the case of the other military sites. However, taking in account that the Garrison will in future consider, under the condition that the defence functions would not be affected, opening the movable gates enclosing CMD to allow members of the public to enter the part of CMD outside the four buildings, the Administration will designate the land area of CMD as "protected place" rather than "closed area".

L.N. 69 and L.N. 70

17. L.N. 69 is made by CE in Council under section 80 of the Shipping and Port Control Ordinance (Cap. 313). It amends the Shipping and Port Control Regulations (Cap. 313A) to prohibit non-local vessels from entering the CMD Inner Area and the CMD Outer Area without the permission of the Director of Marine. The prohibition does not apply to a non-local vessel that has an overall length not exceeding 60 metres if it only enters the CMD Outer Area for the purpose of passing through the CMD Outer Area directly without staying, anchoring, mooring or berthing in the CMD Outer Area. Contravention of the prohibition without reasonable excuse is an offence punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months.

18. L.N. 70 is made by the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548). It amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) to prohibit local vessels from entering the CMD Inner Area and the CMD Outer Area without the permission of the Director of Marine. The prohibition does not apply to a local vessel that has an overall length not exceeding 60 metres if it only enters the CMD Outer Area for the purpose of passing through the CMD Outer Area directly without staying, anchoring, mooring or berthing in the CMD Outer Area. Contravention of the prohibition without reasonable excuse is an offence punishable by a fine at level 3 (i.e. \$10,000) and imprisonment for six months.

19. Members may refer to the LegCo Brief issued by the Security Bureau on 3 May 2019 for further details of L.N. 66 to L.N. 70.

20. As advised by the Clerk to the Panel on Security, the Panel was briefed by the Administration on the legislative proposals at its meeting on 2 April 2019. Some members expressed concern about the need to re-provision CMD, which was located at the central business district, to the Garrison for defence functions. Some members also expressed concern about the arrangements for opening the "non-closed areas" of CMD to the public. However, some other members supported the legislative proposals and considered that the Government should fulfil its obligations to hand over CMD to the Garrison. The Panel passed a motion urging the Administration to expeditiously introduce the legislative proposals.

21. L.N. 66 to L.N. 70 come into operation on 29 June 2019.

Concluding Observations

22. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 64 and L.N. 65. The Legal Service Division is scrutinizing the legal and drafting aspects of L.N. 66 to L.N. 70 and will report further, if necessary.

Prepared by

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9 May 2019