

立法會
Legislative Council

LC Paper No. LS116/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 31 July 2020**

Tabling in LegCo : Council meeting of 14 October 2020

Amendment to be made by : Council meeting of 11 November 2020 (or that of 2 December 2020 if extended by resolution)

Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation **(L.N. 152)**

The Government announced on 31 July 2020 that, amid the severe COVID-19 epidemic situation, the Chief Executive ("CE") in Council has decided to postpone the election to elect members for the seventh term of office of the Legislative Council ("general election") for a year in order to protect public safety and public health as well as ensure elections are conducted openly and fairly.¹ L.N. 152 is made by the CE in Council under section 2 of the Emergency Regulations Ordinance (Cap. 241)² to implement this decision. The provisions of L.N. 152 are summarized in the following paragraphs.

Change of the general election date

2. L.N. 152 provides that:

- (a) the general election is to be held on 5 September 2021;
- (b) the general election originally scheduled to be held on 6 September 2020 ("discontinued election") comes to an end at the beginning of 1 August 2020 ("discontinuation date");
- (c) CE's specification relating to the date of the discontinued election (the notice of which was published in the Gazette on 12 June 2020 as G.N. 3115 of 2020); and the Chief Electoral Officer's ("CEO") two notices relating to the nomination of candidates for election of geographical and functional constituencies (G.N. 3276 of 2020 and G.N. 3277 of 2020 published in the Gazette on 19 June 2020) are revoked; and

¹ See the press release issued on 31 July 2020

<http://www.info.gov.hk/gia/general/202007/31/P2020073100898.htm>

² Section 2(1) of Cap. 241 provides that on any occasion which CE in Council may consider to be an occasion of emergency or public danger, CE in Council may make any regulations whatsoever which he may consider desirable in the public interest. Section 2(2) of Cap. 241 specifies matters that may be provided in regulations made under section 2(1). These matters include amending any enactment, suspending the operation of any enactment and applying any enactment with or without modification.

- (d) all acts done, or purportedly done, under the relevant electoral laws and guidelines issued by the Electoral Affairs Commission; and election related documents (such as a nomination form, declaration, application, authorization etc.) required or used for the purposes of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) in relation to the discontinued election cease to have effect as from the beginning of the discontinuation date.

Related and consequential matters

3. L.N. 152 further provides for certain electoral matters related or consequential to the change of the date of the general election, which are summarized below:

- (a) a Returning Officer ("RO") or CEO must continue to perform his/her functions (including powers and duties) under certain specified provisions of Cap. 541D in relation to the discontinued election including making available for public inspection a copy of each of the copies of authorization of election expense agents and the election advertisements served on RO or CEO;
- (b) candidates must continue to make electronic copies of their election advertisements and the related documents available for public inspection on an open platform maintained by the candidates pursuant to section 105(2)(b) of Cap. 541D;
- (c) the Director of Accounting Services must return the amount of any deposit lodged in relation to the discontinued election to the person who lodges the deposit;
- (d) modifications are made to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to the effect that, for the discontinued election, the candidates must ensure that their election returns are lodged before the expiry of the period of 60 days beginning with the discontinuation date; and
- (e) the Government must make a payment in an amount equal to the declared election expenses³ to an eligible person (i.e. whose nomination form was accepted and not decided to be invalid by RO, and the person did not withdraw his candidature) or an eligible group of persons (i.e. its nomination form containing a nomination list was accepted by RO and was not decided to be invalid by RO, and the nomination list was not rejected by RO), and such payment is not an election donation within the meaning of Cap. 554.

³ "Declared election expenses" is defined under section 9(5) of L.N. 152 to mean the amount set out as the election expenses of an eligible person or eligible group in the election return lodged for the discontinued election.

4. As at the date of issue of this report, no Legislative Council ("LegCo") Brief has been issued by the Administration on L.N. 152.

Enquiries with the Administration

5. By G.N. 3116 of 2020 which was published in the Gazette on 12 June 2020, CE has specified 18 July 2020 as the date from which the sixth term of the LegCo shall stand prorogued ("prorogation notice"). In view of the change of the general election date, the Legal Service Division has made enquiries with the Administration on the reason(s) for not including a provision in L.N. 152 concerning the effect of the prorogation notice.

6. The Administration replied that according to the decision made by the Standing Committee of the National People's Congress ("NPCSC") on 11 August 2020 (published in the Gazette on 14 August 2020 as L.N. 154 of 2020), the sixth term of LegCo is to continue to discharge its duties for not less than one year until the seventh term of office of LegCo begins. In the light of the NPCSC's decision, CE has exercised the powers conferred by section 46 of the Interpretation and General Clauses Ordinance (Cap. 1) to revoke the previous decision to prorogue the sixth term of LegCo with effect from 14 August 2020 and the prorogation notice. Notice of such revocation was published in the Gazette on 14 August 2020 as G.N. (E.) 110 of 2020.

Consultation

7. As advised by the Clerk to the Panel on Constitutional Affairs, the Panel has not been consulted on L.N. 152.

Commencement

8. L.N. 152 came into operation on 1 August 2020.

Concluding observations

9. Subject to the Court of Final Appeal's decision on the issue concerning CE in Council's power to make regulations under Cap. 241⁴, no difficulties have been identified in relation to the legal and drafting aspects of L.N. 152.

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⁴ Leave to appeal against the judgment of the Court of Appeal in CACV 541/2019, CACV 542/2019 and CACV 583/2019 relating to the constitutionality of Cap. 241 and the constitutionality and legality of the Prohibition on Face Covering Regulation (Cap. 241K) was granted on 10 July 2020.