

立法會
Legislative Council

LC Paper No. LS17/19-20

**Further Report by Legal Service Division on
Electoral Affairs Commission (Electoral Procedure)
(Legislative Council) (Amendment) Regulation 2019 (L.N. 143) and
Electoral Affairs Commission (Electoral Procedure)
(District Councils) (Amendment) Regulation 2019 (L.N. 144)
Gazetted on 18 October 2019**

Members may recall from LC Paper No. LS5/19-20 which was issued to Members via LC Paper No. CB(2)101/19-20 that the Legal Service Division ("LSD") was scrutinizing the legal and drafting aspects of L.N. 143 and L.N. 144 and would make a further report if necessary.

2. To recap, one of the amendments made by L.N. 143 and L.N. 144 is to replace the requirement of disclosing the "principal residential addresses" of candidates with "addresses" in Legislative Council ("LegCo") and District Council ("DC") elections in nomination forms and various public notices including those required to be published in the Gazette under the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D) and the Electoral Affairs Commission (Electoral Procedure) (District Councils) Regulation (Cap. 541F) respectively.

3. LSD has made certain enquiries in relation to the above amendment and the Administration's clarification is summarized below:

(a) Definition of "address"

Given that the ordinary meaning of the word "address" is to be adopted, a definition of the word "address" has not been added to Cap. 541D and Cap. 541F respectively. The Administration has further clarified that "address" includes office or business address, correspondence address, residential address, or post office box number of a candidate, but does not include a candidate's electronic address.

(b) Request by a candidate for change of address to be disclosed in public notices

An update of the address of a candidate provided in the nomination form would usually be allowed by the returning officer ("RO")

concerned upon request before the end of the nomination period in practice, although the relevant statutory provisions (i.e. section 18(1) of Cap. 541D and section 18(1) of Cap. 541F) do not so provide.

(c) Verification of residency requirement

As to how RO would verify whether a candidate has met the three-year residency requirement, the Administration's reply is that in a nomination form, a candidate is required to make a declaration that he or she is eligible to be nominated as a candidate, including that he or she has ordinary resided in Hong Kong for the three years immediately preceding the nomination. The candidate is also required to expressly consent to RO and the Registration and Electoral Office ("REO") verifying the information supplied by him or her and his or her eligibility to be nominated as a candidate with all the relevant authorities (including the Immigration Department). REO has adopted such practice in the 2019 District Council Ordinary Election and will continue to do so in future elections. If anyone has query as to whether a particular candidate has satisfied the residency requirement, he or she may raise the query to RO of the constituency concerned. If RO receives such a query or in case of doubt, RO may request the Immigration Department to provide a movement record for verification purposes.

4. Subject to Members' views on the matters set out in paragraph 3 above, no legal and drafting difficulties have been identified in relation to L.N. 143 and L.N. 144.

5. Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the period for amending L.N. 143 and L.N. 144 will expire at the Council meeting of 20 November 2019. Members are invited to note that unless the amendment period is extended, the deadline for giving notice of amendment under Rule 29(2) of the Rules of Procedure ("RoP") is **Wednesday, 13 November 2019** and the deadline for giving notice of a motion under section 34(4) of Cap. 1 to extend the amendment period to the Council meeting of 11 December 2019 under RoP 29(3) is **Friday, 15 November 2019**.

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