

L.N. 152 of 2020

**Emergency (Date of General Election) (Seventh Term of
the Legislative Council) Regulation**

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Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation

(Made by the Chief Executive in Council under section 2 of the
Emergency Regulations Ordinance (Cap. 241))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 1 August 2020.

2. Interpretation

In this Regulation—

2021 election (2021年選舉) means the general election to be held on 5 September 2021, as required under section 6(1);

Cap. 541D (《第541D章》) means the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D);

Cap. 542 (《第542章》) means the Legislative Council Ordinance (Cap. 542);

Cap. 554 (《第554章》) means the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554);

Chief Electoral Officer (總選舉事務主任) has the meaning given by section 2(1) of the Electoral Affairs Commission Ordinance (Cap. 541);

discontinuation date (中止日期) means 1 August 2020;

discontinued election (已中止的選舉) means the general election scheduled to be held on the original date pursuant to the Chief Executive's specification referred to in section 3(1);

election expenses (選舉開支)—

- (a) in relation to the discontinued election—has the meaning given by section 2(1) of Cap. 554, as read together with section 8(2); and
- (b) in relation to the 2021 election—has the meaning given by section 2(1) of Cap. 554;

electoral law (選舉法)—

- (a) means any law in force providing for the election of the members of the Legislative Council; and
- (b) includes any guidelines issued under section 6(1) of the Electoral Affairs Commission Ordinance (Cap. 541);

electoral matter (選舉事宜)—

- (a) means an act that is done, or purportedly done, under the electoral law; and
- (b) includes an election related document (as defined by section 103(4) of Cap. 541D);

function (職能) includes a power and a duty;

general election (換屆選舉) means an election to elect members for a new term of office, being the seventh term of office, of the Legislative Council;

original date (原定日期) means 6 September 2020;

Returning Officer (選舉主任) has the meaning given by section 3(1) of Cap. 542.

Part 2

Change of Date of General Election

3. Revocation of specification of date of general election made under section 6(1) of Cap. 542

- (1) The Chief Executive's specification is revoked.
- (2) In this section—

Chief Executive's specification (行政長官指明) means the specification made by the Chief Executive under section 6(1) of Cap. 542—

- (a) that specified the original date as the date for holding the general election; and
- (b) the notice of which was published in the Gazette on 12 June 2020 as Government Notice 3115 of 2020.

4. Revocation of notices published by Chief Electoral Officer under sections 4 and 5 of Cap. 541D

- (1) The Chief Electoral Officer's notices are revoked.
- (2) In this section—

Chief Electoral Officer's notices (總選舉事務主任公告) means the following notices published by the Chief Electoral Officer—

- (a) the Notice of General Election of the Legislative Council (Geographical Constituencies), which was published, under section 4 of Cap. 541D, in the Gazette on 19 June 2020 as Government Notice 3276 of 2020; and

- (b) the Notice of General Election of the Legislative Council (Functional Constituencies), which was published, under section 5 of Cap. 541D, in the Gazette on 19 June 2020 as Government Notice 3277 of 2020.

5. Discontinued election ends and related electoral matters cease to have effect

- (1) The discontinued election comes to an end at the beginning of the discontinuation date.
- (2) Except for the purposes of the matters provided in Part 3, all electoral matters in relation to the discontinued election that took place or came into being before the discontinuation date (including but not limited to the Chief Executive's specification and the Chief Electoral Officer's notices referred to in sections 3 and 4 respectively) cease to have effect as from the beginning of that date.
- (3) To avoid doubt, and without limiting subsections (1) and (2)—
 - (a) the discontinued election is not to be regarded as an election that has failed for the purposes of section 46(2) of Cap. 542;
 - (b) except for the purposes of the matters provided in Part 3, on and after the discontinuation date, an electoral officer (as defined by section 3(1) of Cap. 542) is not required to perform any function provided in any electoral law in relation to the discontinued election; and
 - (c) the electoral matters referred to in subsection (2) do not have any effect in relation to the 2021 election.

6. New date of general election and application of electoral law to 2021 election

- (1) Section 6(1) and (2) of Cap. 542 does not apply to the 2021 election, and the general election is to be held on 5 September 2021 instead of the original date.
 - (2) Subject to subsection (1), in applying the provisions of any electoral law to the 2021 election, 5 September 2021 is to be taken as a date specified under section 6(1) of Cap. 542.
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Part 3

Matters Related or Consequential to Change of Date of General Election

7. Matters arising from change of date of general election

- (1) On and after the discontinuation date—
 - (a) a Returning Officer or the Chief Electoral Officer, as the case may be, must continue to perform their functions under sections 26 and 105(7) and (8) of Cap. 541D in relation to the discontinued election;
 - (b) a Returning Officer must send any document referred to in section 86(1)(e), (f), (g) or (h) of Cap. 541D in relation to the discontinued election to the Chief Electoral Officer, who must deal with the document in accordance with section 88 of Cap. 541D (as if the reference in that section to “the date of the election to which they relate” were a reference to the discontinuation date); and
 - (c) a candidate (as defined by section 2(1) of Cap. 541D) must continue to comply with section 105(2)(b) of Cap. 541D in relation to the discontinued election.
- (2) The Director of Accounting Services must return the amount of any deposit lodged under section 2(1) of the Legislative Council (Subscribers and Election Deposit for Nomination) Regulation (Cap. 542 sub. leg. C) in relation to the discontinued election to the person who lodges the deposit.
- (3) Any election expenses incurred at or in connection with the discontinued election by or on behalf of a person are not to be regarded as election expenses incurred by or on

behalf of the person at or in connection with the 2021 election.

- (4) Anything done by a person before the discontinuation date is not to be regarded as a public declaration by the person of the person's intention to stand as a candidate at the 2021 election.

8. **Application of Cap. 554 to discontinued election**

- (1) For the purposes of section 4(1) of Cap. 554, the discontinued election is an election to which Cap. 554 applies.

- (2) Cap. 554 applies to the discontinued election with the following modifications—

- (a) in section 2(1) of Cap. 554, the following definition is taken to be substituted for the definition of *election period*—

“*election period* (選舉期間) means the period beginning with 18 July 2020 and ending with 31 July 2020;” and

- (b) the following provision is taken to be substituted for section 37(1B) and (1C) of Cap. 554—

“(1B) For the discontinued election (as defined by section 2 of the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation), the candidate must ensure that the election return is lodged before the expiry of the period of 60 days beginning with 1 August 2020.”.

9. Government's payment in respect of declared election expenses

- (1) An eligible person or eligible group is entitled to receive a payment from the Government in an amount equal to the declared election expenses.
- (2) For the purposes of subsection (1), a person is an eligible person if—
 - (a) a Returning Officer at the discontinued election accepted a nomination form in respect of the person;
 - (b) the Returning Officer did not decide that the nomination form or the nomination was invalid under section 16 of Cap. 541D before the discontinuation date; and
 - (c) the person did not withdraw the person's candidature.
- (3) For the purposes of subsection (1), a group of persons is an eligible group if—
 - (a) a Returning Officer at the discontinued election accepted a nomination form containing a nomination list in respect of the group;
 - (b) the Returning Officer did not decide that the nomination form was invalid under section 16 of Cap. 541D before the discontinuation date; and
 - (c) the Returning Officer did not reject the nomination list under section 38(7) of Cap. 542 before the discontinuation date.
- (4) To avoid doubt, a payment referred to in subsection (1) is not an election donation within the meaning of Cap. 554.
- (5) In this section—

declared election expenses (申報選舉開支) means—

 - (a) in relation to an eligible person—the amount set out as the person's election expenses in the election return lodged for the discontinued election; and

- (b) in relation to an eligible group—the amount set out as the group’s election expenses in the election return lodged for the discontinued election;

election return (選舉申報書) means the return required to be lodged in accordance with section 37 of Cap. 554, as read together with section 8(2);

nomination form (提名表格) has the meaning given by section 2(1) of Cap. 541D;

nomination list (提名名單) has the meaning given by section 2(1) of Cap. 541D.

10. **Guidelines regarding Government’s payment in respect of declared election expenses**

- (1) The Secretary for Constitutional and Mainland Affairs (**Secretary**) may issue guidelines indicating—
 - (a) the manner and form in which a claim for a payment referred to in section 9(1) must be made, supported and verified; and
 - (b) the particulars that such a claim must contain.
- (2) The Secretary may amend the guidelines, and a reference in this section to the guidelines is to be construed as including a reference to the guidelines as so amended.
- (3) The guidelines, and the amendments made to them, may be published in any manner the Secretary considers appropriate.
- (4) Neither the guidelines, nor the amendments made to them, are subsidiary legislation.

Emergency (Date of General Election) (Seventh Term of the Legislative Council)
Regulation

L.N. 152 of 2020
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Wendy LEUNG
Clerk to the Executive Council

COUNCIL CHAMBER

28 July 2020

Explanatory Note

The purposes of this Regulation are to—

- (a) revoke certain specification and notices in respect of the general election for the seventh term of office of the Legislative Council originally scheduled to be held on 6 September 2020 (*discontinued election*);
- (b) provide that the discontinued election comes to an end at the beginning of 1 August 2020, and that acts done, or purportedly done, under the electoral law in relation to the discontinued election cease to have effect accordingly;
- (c) provide that the general election for the seventh term of office of the Legislative Council is to be held on 5 September 2021 instead; and
- (d) provide for matters related or consequential to the change of the date of the general election, including the requirement of the Government to make payments to eligible persons and eligible groups in respect of their declared election expenses.