

LCQ1: 2020 Legislative Council General Election

Following is a question by Hon Hui Chi-fung and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (October 21):

Question:

On July 31 this year, the Government made, on grounds of the severe situation of the epidemic, the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation to stipulate that the 2020 Legislative Council (LegCo) General Election is to be held on September 5 next year instead of the original date. Besides, in response to a report submitted by the Chief Executive, the Standing Committee of the National People's Congress made a decision at a session on August 11 this year that, after September 30 this year, the sixth term LegCo is to continue to discharge duties for not less than one year until the seventh term of office of LegCo begins. In this connection, will the Government inform this Council:

(1) whether it has assessed if the casting of votes by members of the public on the LegCo election day is more conducive to the spread of the epidemic than their taking part in large-scale public events such as those held in celebration of Hong Kong's return to China and the National Day; if it has assessed and the outcome is in the affirmative, of the scientific justifications for that;

(2) given that the findings of a public opinion survey have shown that 68 per cent of the respondents consider that the Government should hold the LegCo General Election expeditiously, but the newly scheduled election date is more than 10 months away from now, whether the Government will go along with the wishes of the public by conducting the relevant election within four months; if so, of the details; if not, the reasons for that; and

(3) as some members of the public are worried that the Government will seek to reschedule, on different grounds, the election time and again in the future, thereby transforming the current-term LegCo into a "perpetual legislature", whether the Government has assessed the possibility of the election being rescheduled again, and whether such a situation will undermine the recognition for LegCo?

Reply:

President,

Amidst the severe COVID-19 epidemic situation in Hong Kong, the Chief Executive (CE) announced on July 31 this year that the 2020 Legislative Council (LegCo) General Election, originally scheduled for September 6, would

be postponed for a year to September 5, 2021, in order to protect public safety and public health as well as ensure that the election would be conducted openly and fairly. The justifications for the decision had been elaborated in detail during the announcement made by the CE. To implement this decision, the CE-in-Council had invoked the Emergency Regulations Ordinance (Cap. 241) to make the Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation (Regulation). The Regulation specifies the new election date and has brought the original electoral process to an end.

Article 69 of the Basic Law stipulates that the term of the LegCo shall be four years, except the first term which shall be two years. Therefore the current term of the LegCo must end on September 30, 2020, and there would be a lacuna in the LegCo of the Hong Kong Special Administrative Region (HKSAR) before the election of the seventh-term LegCo. To overcome this problem, subsequent to the decision made by the Executive Council, the CE submitted an urgent report to the Central People's Government to seek its support and guidance. The State Council replied and expressed support for the decision made by the CE-in-Council to postpone the election for the seventh-term LegCo for a year, and advised that it would make a submission in accordance with the law to the Standing Committee of the National People's Congress (NPCSC) for its decision on how to deal with the lacuna of the LegCo. In accordance with the decision made by the NPCSC on August 11, the sixth-term LegCo of the HKSAR is to continue to discharge duties for not less than one year until the seventh term of office of LegCo begins. After the seventh-term LegCo is formed in accordance with the law, its term of office remains to be four years. The decision was published in the Gazette on August 14.

Our reply to Hon Hui Chi-fung's question is as follows:

(1) and (2) The HKSAR Government has repeatedly stressed that the health and wellbeing of the members of the public is the overriding concern of any responsible government. The wave of epidemic in July 2020 saw a rapid surge in confirmed cases and deaths, as well as an increasing risk of a community outbreak, which may result in a collapse of the local public hospital system and a significant public crisis. From July 8 to July 30, there were 1 852 new cases, up 140 per cent from the 1 300 cases accumulated in the past six months, of which the number of confirmed cases on July 30 hit record high of 149 cases; 90 per cent of new cases were local ones and nearly half of them had unknown infection sources.

Amid the severe situation of the epidemic, the HKSAR Government has extended the validity of the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation to the end of this year. The most stringent measures in respect of boundary controls and social distancing were put in place in July, and new measures including the mandatory wearing of masks on all public transport and in public places, as well as the imposition of pre-arrival COVID-19 test and post-arrival 14-day compulsory quarantine in hotels were also introduced.

The LegCo General Election is massive in scale: 4.4 million registered electors, 70 seats, over 600 polling stations and 34 000 electoral staff, polling has to be completed within a day with long polling hour (the poll runs consecutively for 15 hours from 7.30am to 10.30pm). Coupled with a dedicated central counting station and a media centre, there would be huge infection risks associated with round the clock crowd gatherings and close human contacts, the situation of which is different from other public celebration activities. On the other hand, the outbreak of the epidemic also leads to the question of whether the election could be conducted fairly, for instance, it would not be possible for candidates to carry out any meaningful rallying activities permitted by the law amid the severe epidemic situation. Having regard to the above factors, it would be difficult to ensure that the election could be conducted in a fair and just manner if we were to hold the election on September 6 as originally scheduled. The Electoral Affairs Commission also wrote to the CE on July 28 to set out their views in detail on the public health risks if the election were to be held as scheduled on September 6. As we can see, postponing the election was a very difficult but a necessary decision.

In fact, it is noted that many countries all over the world had postponed the elections due to the epidemic. According to the International Foundation for Electoral Systems, as of July 15, postponements were recorded in 62 countries and eight territories involving a total of over 100 election events.

Although the epidemic has eased slightly as compared to July, the situation has yet stabilised, and preventing and controlling the disease is still the top priority of the Government and the Hong Kong community. There is yet to be any clear indication when the epidemic will end. Experts have advised that a winter surge is very likely by the end of this year. If we were to arrange a LegCo General Election now, it would involve close to 4.4 million registered electors. If a poll were to be conducted, it would lead to huge infection risks. In addition, as the regulations to prohibit group gatherings are still in force, it would not be possible for candidates to carry out any meaningful rallying activities. As such, in order to satisfy the requirement that the election is conducted fairly and openly, and to prevent the spread of the epidemic, we have no plan to conduct the LegCo General Election at this stage. As specified in the announcement of the CE on July 31, postponing the election for one year can avoid disruption to the normal annual LegCo business and electoral cycles.

(3) As I mentioned earlier, the NPCSC has made an authoritative decision in accordance with the relevant provisions in the Constitution of the People's Republic of China and the Basic Law on August 11, fully resolving the issue of the lacuna in the legislature arising from the postponement of the election. In fact, as mentioned above, there are numerous examples of overseas countries postponing their elections due to the epidemic.

The Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation has specified that September 5, 2021 will be the new election date. The Constitutional and Mainland Affairs Bureau will,

as in the past, work closely with the Electoral Affairs Commission to ensure that the election is conducted in an open, fair and honest manner in accordance with the relevant legislation. The Constitutional and Mainland Affairs Bureau and the Registration and Electoral Office will also strive to improve the existing electoral arrangements, while closely keep in touch with the Food and Health Bureau and the Centre for Health Protection to carefully monitor the development of the outbreak in assessing the impact of the epidemic on the election from now until the 2021 LegCo General Election, and formulate various plans in view of the different possibilities concerning the development of the epidemic in a timely manner.

Thank you, President.