

Government decision to postpone LegCo poll reasonable, legal and in public interest

In response to comments contained in a statement of the Hong Kong Bar Association (the Association) issued yesterday (August 2) evening, a Government spokesman stressed today (August 3) that the 2020 Legislative Council (LegCo) General Election was postponed on public health grounds.

"The health and wellbeing of all Hong Kong people is our overriding concern, amidst the severity of a new wave of the COVID-19 epidemic which has recorded over 2 300 confirmed cases since July 1, compared to a cumulative caseload of about 1 200 over the preceding six months," the spokesman said.

"We are at a critical juncture in our current battle against COVID-19. If not handled resolutely, the current wave of infections could spiral out of control to overwhelm our public hospital system.

"In fact, in the light of the latest epidemic situation, the Electoral Affairs Commission wrote to the Chief Executive on July 28 expressing concerns over the public health risks of conducting the General Election.

"In order to combat the spread of the virus, the Government has put in place the most stringent social distancing measures ever adopted since January. These have inevitably affected the normal operation of business and people's daily activities.

"The Association's doubts about the evidential basis of the Government's decision have clearly overlooked these facts and concerns.

"Contrary to what the Association seems to imply, the Government attaches importance to protecting the constitutional right of Hong Kong residents to participate in elections.

"With the stringent social distancing measures in place, no meaningful electioneering activities could be conducted; this would prevent candidates from putting across their manifesto to voters. Moreover, the strict boundary control measures make it virtually impossible for voters from the Mainland and overseas to return to cast their vote.

"In addition, legal, practical and time constraints mean it is not feasible to introduce measures such as extra polling days, postal voting or e-voting.

"The decision to postpone the election is therefore to protect public health and to protect the voting rights of all registered voters," the spokesman added.

On the duration of the postponement, the spokesman stated that the current wave of infections would likely last for at least several weeks or longer. There may also be a winter surge later in the year.

"Postponing the election for 14 days under section 44 of the Legislative Council Ordinance (Cap. 542), as suggested by the Association, is not a practical solution to this unprecedented problem," the spokesman said.

"If the power to postpone the election for 14 days is repeatedly invoked, it will likely be regarded as a mis-use of power subject to legal challenge. On top of that, it will create highly undesirable uncertainties for all parties concerned."

The spokesman pointed out that the Legislative Council performs important substantive functions, and has an annual business cycle.

On invoking the Emergency Regulations Ordinance (Cap. 241) to postpone the election, the spokesman stressed that it was the only viable option.

"The legal basis is sound, as the present epidemic situation can be regarded as an occasion of public danger and emergency, and the decision to postpone is in the public interest," the spokesman said.

"In a free society like Hong Kong, citizens are free to raise legal challenges against policy decisions or existing legislation in accordance with the law at any time.

"It will not be in the public interest if the Government refrains completely from making decision or invoking legal powers under existing legislation due to the possible outcome of legal challenges.

"In the present case, it is key to note that the Court of Appeal upheld the constitutionality of the Emergency Regulations Ordinance in a judgment in April 2020."

The spokesman said a pressing task following the postponement is to address the lacuna or gap that emerges when the current LegCo term ends on September 30 in accordance with Article 69 of the Basic Law. Given the important functions performed by the LegCo, any such lacuna will seriously undermine government operations and will not be in the public interest.

As such, the Chief Executive has sought the support and guidance of the Central People's Government.

"Noting the urgency of the matter, the State Council has replied to the Chief Executive expeditiously, expressing support for the decision to postpone the election and undertaking to make a submission in accordance with the law to the Standing Committee of the National People's Congress for its decision," the spokesman said

"The Hong Kong Special Administrative Region (HKSAR) is an inalienable part of the People's Republic of China. The National People's Congress is the highest organ of state power. Under the Constitution of the People's Republic of China, the National People's Congress Standing Committee has the authority to tackle this constitutional issue encountered by the HKSAR.

"We do not see how this is contrary to the principles of legality and legal certainty and degrades the rule of law in Hong Kong as alleged by the Association."