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**Legislative Council**

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**Paper for the House Committee**

**Report of the Subcommittee on  
Pleasure Grounds (Amendment) Regulation 2020**

**Purpose**

This paper reports the deliberations of the Subcommittee on Pleasure Grounds (Amendment) Regulation 2020 ("the Subcommittee").

**Background**

2. The Leisure and Cultural Services Department ("LCSD") manages public pleasure grounds ("PPGs") in accordance with the Pleasure Grounds Regulation (Cap 132BC) ("the Regulation"). According to the Administration, members of the public often carry out in PPGs managed by LCSD the following music activities: operating or playing, or making any sounds by means of, musical or other instrument, or singing songs. Besides, some singing groups use loudspeakers or amplifiers and generate excessive noise, thereby causing nuisance to nearby residents. The Administration has advised that whilst LCSD has implemented various noise control measures, such as putting up banners and notices to remind members of the public to be mindful of the level of sounds emitted from their activities, carrying out joint operations with the Hong Kong Police Force, strengthening manpower to monitor the music activities, noise problems are still prevalent in a few PPGs.

3. According to the Administration, LCSD has received from time to time complaints from members of the public in respect of noise nuisance arising from music activities in PPGs. LCSD considers it necessary to amend the relevant provisions in the Regulation for effective tackling of noise nuisance in PPGs.

**The Pleasure Grounds (Amendment) Regulation 2020**

4. On 22 May 2020, the Administration published in the Gazette the Pleasure Grounds (Amendment) Regulation 2020 ("the Amendment

Regulation"). The Amendment Regulation replaces the existing section 25<sup>1</sup> of the Regulation with a new section 25 and amends section 30 of the Regulation to mainly provide that :

- (a) the Director of Leisure and Cultural Services ("the Director") may, by notice conspicuously displayed in a PPG, specify any requirement in relation to the carrying out of any music activity<sup>2</sup> there (i.e. new section 25(1));
- (b) a person must not carry out in a PPG a music activity that does not comply with a requirement specified under section 25(1) unless the person has obtained the Director's written permission to do so (i.e. new section 25(2));
- (c) a person must not carry out in a PPG a music activity to the annoyance of "any other person" (as opposed to "any other user thereof" as provided under the existing section 25) unless the first-mentioned person has obtained the Director's written permission to carry out the activity there (i.e. new section 25(3));
- (d) a person must not solicit or accept, or agree to receive, in a PPG any reward for any music activity or related activity<sup>3</sup> carried out there unless the person has obtained the Director's written permission to do so (i.e. new section 25(4)); and
- (e) a person who contravenes the new section 25(2), (3) or (4) commits an offence and is liable on conviction to a maximum fine at level 3 (i.e. \$10,000) (as opposed to a level 1 fine of \$2,000 as provided under the existing section 30) and to imprisonment for 14 days (i.e. new section 30(2)).

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<sup>1</sup> Section 25 of the Regulation stipulates that:

"Save where the Director [of Leisure and Cultural Services] has, in writing, permitted the operation or playing of, or the making of any sounds by means of, any such instrument or the singing of any song, no person shall, in any pleasure ground, to the annoyance of any other user thereof operate or play, or make any sounds on, any musical or other instrument, including any gramophone or radio apparatus or sing any song."

<sup>2</sup> "music activity" is defined in the new section 25(6) to mean "the operation or playing of, or the making of any sounds by means of, any musical or other instrument (including a gramophone, radio apparatus, amplifier or loudspeaker); or the singing of any song".

<sup>3</sup> As defined in the new section 25(6), "related activity", in relation to a music activity, means any activity to prepare for, facilitate or accompany the music activity, and includes—

- (a) the setting up of any musical or other instrument used in the music activity;
- (b) the acting as a host for the music activity; or
- (c) any dancing, or any other similar act, that accompanies the music activity.

5. For further details of the legislative amendments made under the Amendment Regulation, please refer to paragraph 7(a) to (d) of the Legislative Council ("LegCo") Brief (no file reference) issued by the Home Affairs Bureau and LCSD on 19 May 2020.

6. The Amendment Regulation was tabled in LegCo at its meeting of 27 May 2020. The commencement date of the Amendment Regulation is set on 24 July 2020.

### **The Subcommittee**

7. At the House Committee meeting on 29 May 2020, Members agreed to form a subcommittee to scrutinize the Amendment Regulation. The membership list of the Subcommittee is at the **Appendix**. Under the chairmanship of Hon Vincent CHENG, the Subcommittee has held one meeting with the Administration.

### **Deliberations of the Subcommittee**

#### Ensuring effective enforcement of the Amendment Regulation

8. While members in general are supportive of the amendments under the Amendment Regulation, members have enquired about the preparations made by the Administration to ensure effective implementation of the Amendment Regulation. Hon Vincent CHENG and Hon Holden CHOW have stressed that the Administration has to deploy adequate manpower to take enforcement action in parks especially those with more serious noise problems (e.g. Tuen Mun Park and Hoi Sham Park). They have requested the Administration to ensure that the LCSD staff fully understand their enforcement duties and the relevant enforcement guidelines. They have also requested the Administration to enhance training of the staff concerned and strengthen the guidelines to facilitate enforcement work upon implementation of the Amendment Regulation. Members have also enquired about the enforcement approach and what evidence will be used for prosecution of the relevant offences.

9. The Administration has advised that LCSD is preparing for the implementation of the Amendment Regulation, including strengthening staff training, drawing up enforcement guidelines, and reviewing the existing manpower of the parks with noise problems, etc. While only authorized officers of LCSD would take enforcement action in PPGs under the Regulation, security staff have been hired to assist in duties like maintaining order and reminding venue users to be mindful of the sound volume when the sound level is too high. The Administration has assured members that additional staff will be deployed in PPGs where necessary to ensure effective enforcement of the

Amendment Regulation. LCSD would also conduct joint operations with the Police to carry out enforcement work in those parks with noise problems from time to time for combating violation of the Amendment Regulation.

10. The Administration has further advised that LCSD has provided staff with guidelines for monitoring and regulating noise from activities carried out by groups at outdoor leisure venues. In drawing up the guidelines, reference has been made to the Noise Control Ordinance (Cap. 400) regarding the regulation for different venues, natures of activities and situation, and objective criteria are adopted as far as possible, e.g. sound measuring device is used to measure and monitor the noise level generated from activities. If the sound level is too high, venue staff will prompt the users to be mindful of the sound volume and keep it reasonably low. In general, LCSD staff will first warn the person concerned verbally. If the warning is unheeded, enforcement action would follow. However, LCSD staff may also take enforcement action right away without prior warning where the circumstances warrant. The Administration has further advised that LCSD will, in light of circumstances of individual prosecution cases, collect sufficient evidence as far as possible, e.g. photos and video footage taken on the spot, noise measurement records and witness statements (e.g. in what ways the witness was annoyed by the noise, duration and intensity of noise exposure, etc.), which will be used as evidence for prosecution. Meanwhile, LCSD will make reference to the arrangements adopted by the departments concerned in monitoring and regulating noise, and seek legal advice in improving the existing guidelines.

11. Members note that under the new section 25, venue users, LCSD venue staff and any other persons (including nearby residents) who are annoyed by the noise may act as prosecution witnesses in LCSD's enforcement action. Hon Holden CHOW has sought clarification on whether enforcement action can be taken if no one lodges a complaint even though excessive noise is generated by a music activity in a PPG. He is concerned that under the new section 25(3), it is still required to be established that "any other person" has been annoyed in order to institute prosecution.

12. The Administration has advised that apart from the new section 25(3), other new provisions are also added to section 25 to (i) prohibit solicitation of, acceptance of or agreement to receive reward for music activities or related activities and (ii) prohibit persons from carrying out music activities in PPGs that do not comply with the requirements specified in notices displayed there. Contravention of the relevant new provisions would also be made a criminal offence under section 30 of the Regulation and enforcement action can be taken against these contraventions.

13. Hon Holden CHOW has suggested that a telephone complaint hotline should be provided to facilitate the public to report noise nuisance arising from music activities in PPGs. The Administration has advised that a hotline for the purpose will be provided and displayed in each PPG. Members of the public may also dial 1823 for lodging relevant complaints.

Prohibiting acceptance of pecuniary reward

14. Members note that the Administration has included the new section 25(4) to prohibit a person from soliciting, or accepting, or agreeing to receive, in a PPG any reward for a music activity or related activity (e.g. setting up instruments used in the music activity, acting as a host for the music activity, or dancing, or any other similar act, that accompanies the music activity) carried out there unless the person has obtained the Director's written permission to do so. A contravention of this provision is made a criminal offence under section 30 of the Regulation. The Administration has advised that persons who carry out music activities or related activities in PPGs without soliciting, accepting or agreeing to receive rewards there (e.g. for self-entertainment) will not be affected by this new provision.

15. While expressing support for the above amendment, some members have expressed concern as to whether the relevant amendment can be enforced effectively in situations where the reward is made by electronic means (e.g. WeChat Pay). The Administration has advised that electronic payments are covered in provisions in the new section 25. Firstly, the definition of "reward" in the new section 25(6) "includes any gift, payment, service, favour, benefit or advantage". The Administration has explained that by this definition, "reward" would cover rewards in different forms, e.g. rewards in pecuniary or non-pecuniary forms. The Administration has advised that in drawing up the definition, reference has been made to relevant existing provisions of other legislation. Furthermore, the new section 25(5) also makes clear that it does not matter in what way the reward is or is to be given. As such, the effect of these provisions, when taken together, is that they cover rewards (e.g. payment) given by, e.g., electronic means.

16. Hon YUNG Hoi-yan has enquired whether consideration will be given to proposing that giving reward for any music activity or related activity carried out in a PPG be made a criminal offence so as to further enhance the deterrent effect. The Administration has explained that the root of noise nuisance problems in some PPGs lies in the fact that persons who carry out music activities there are often given reward for such activities. The Administration considers that the new section 25(4) would be able to stop persons seeking to obtain money or reward through the above-mentioned activities in PPGs. The Administration has further explained that the person who gives reward for a music activity or related activity may have done so out

of goodwill. Based on the principle of proportionality, it is not proposed that a person who gives reward for any music activity or related activity carried out in a PPG would commit an offence under the Amendment Regulation.

17. Hon Vincent CHENG, Hon Holden CHOW and Hon YUNG Hoi-yan have suggested that the Administration should consider conducting undercover operations to enable more effective enforcement work in tackling the acceptance of reward for music activities or related activities carried out in PPGs. The Administration has advised that the suggestion is noted and it will evaluate the effectiveness of enforcement after the Amendment Regulation has come into operation and seek legal advice as appropriate.

#### Definition of "related activity"

18. With reference to the definition of "related activity" in the new section 25(6), the Legal Adviser to the Subcommittee has pointed out that the definition includes "any dancing, or any other similar act, that accompanies the music activity". She has requested the Administration to elaborate on the kinds of acts that would be regarded as "any other similar act" in this provision and the policy intent.

19. The Administration has reiterated that the root of noise nuisance problems in some PPGs lies in the fact that persons who carry out music activities there are often given reward for such activities, and it is noted that such music activities often involve not only singing but also dancing as well. The Administration has explained that to avoid creating a loophole such that enforcement action cannot be taken in the situation where it is the dancer, not the singer, who has accepted reward for the music activity, "related activity" is defined to include "any dancing, or any other similar act, that accompanies the music activity". The Administration has further explained that as it is unable to predict what kinds of acts, apart from dancing, would accompany such music activities in the future, the expression "any other similar act" is included in paragraph (c) of the definition to cover any such acts that cannot be foreseen now.

20. In response to the further enquiry of the Legal Adviser to the Subcommittee, the Administration has advised that audience who take part in dancing that accompanies the music activity in a PPG would not commit an offence under the new section 25(4) so long as he/she does not solicit, accept, or agree to accept any reward for the related activity.

**Recommendation**

21. The Subcommittee raises no objection to the Amendment Regulation and will not propose any amendment to it.

**Advice Sought**

22. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2  
Legislative Council Secretariat  
17 June 2020

**Subcommittee on Pleasure Grounds (Amendment) Regulation 2020**

**Membership list**

**Chairman** Hon Vincent CHENG Wing-shun, MH, JP

**Members** Hon Holden CHOW Ho-ding  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan, JP

Total : 4 Members

**Clerk** Ms Joanne MAK

**Legal Adviser** Ms Clara TAM

**Date** 9 June 2020