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Subcommittee on Pleasure Grounds (Amendment) Regulation 2020

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Pleasure Grounds (Amendment) Regulation 2020 ("the Amendment Regulation") and summarizes the relevant discussion of the Panel on Home Affairs ("the Panel") on the subject.

Background

2. According to the Administration, the Leisure and Cultural Services Department ("LCSD") manages public pleasure grounds ("PPGs") in accordance with the Pleasure Grounds Regulation (Cap. 132BC) ("the Regulation"). Currently, LCSD relies on section 25 of the Regulation to take action against noise nuisance at its parks.¹ However, in order to take enforcement action under section 25, it has to be established that a venue "user" has been annoyed, and the venue user would normally be required to serve as a prosecution witness. As LCSD's park keeper (as the manager of the park) and the residents living nearby are not regarded as a venue user, LCSD is unable to initiate or take enforcement action solely based on its staff's observations, or complaints which are mostly from nearby residents, unless and until a venue user is willing and able to come forward as the prosecution witness.

3. At the meeting on 29 April 2019, the Panel was consulted on the Administration's proposed amendment to replace "user thereof" with "person" in section 25 of the Regulation. The Administration explained that with the proposed amendment, LCSD's park keepers and any other persons (in particular those nearby residents) who were annoyed by the noise could be the prosecution witness in LCSD's enforcement action, thereby enabling more proactive enforcement and prosecution.

¹ 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."

4. At the above meeting, while members in general welcomed the proposed amendment, some members considered that additional measures were needed to step up the control of noise nuisance in PPGs. The Panel passed a motion urging the Administration to, among other things, conduct a comprehensive review of the Regulation and adopt additional measures, including raising the maximum penalty for the offence of contravening section 25 of the Regulation, combating tipping of performers and introducing a "blacklisting" system to prohibit repeated offenders of the Regulation from entering the PPGs concerned for a certain period of time. The motion and the Administration's response are at Annexes B and C to the Legislative Council ("LegCo") Brief (no file reference) issued by the Home Affairs Bureau and LCSD on 19 May 2020.

5. In the light of members' views and suggestions, the Administration has reviewed the relevant provisions of the Regulation and put forth the latest legislative amendments for consultation with the Panel at its meeting on 11 May 2020. In addition to the proposed expansion of the definition of persons subject to annoyance in section 25 from "any other user thereof" to cover "any person", the Administration proposed to further amend the Regulation to prohibit acceptance of pecuniary reward for music activities in PPGs, to empower the Director of Leisure and Cultural Services to put up notices to stipulate relevant rules, and to raise the penalty level.

The Pleasure Grounds (Amendment) Regulation 2020

6. The Amendment Regulation is made by the Secretary for Home Affairs ("SHA"), in his capacity as the Authority², under section 109 of the Public Health and Municipal Services Ordinance (Cap. 132) to amend the Regulation. Details of the Administration's proposed legislative amendments are set out in paragraphs 7 to 9 of the LegCo Brief under reference.

7. The Amendment Regulation is proposed to come into operation on 24 July 2020.

Relevant discussion of the Panel on Home Affairs

Penalties for contravention of section 25 of the Pleasure Grounds Regulation

8. While members in general expressed support for raising the maximum fine for the offence of contravening section 25 of the Regulation to \$10,000 as proposed by the Administration, some members suggested that a progressive penalty system should be put in place whereby heavier penalties would be

² By virtue of sections 2 and 3 of, and the Third Schedule to, Cap. 132, the "Authority" for section 109 of Cap. 132 means SHA.

imposed on repeated offenders. There was also a suggestion that consideration should be given to further increasing the maximum fine level to enhance the deterrent effect.

9. The Administration advised that the proposed maximum fine level of \$10,000 was five times the current maximum fine level of \$2,000 for the offence in question, and that the imprisonment term of 14 days would be maintained. The Administration explained that in coming up with the proposed penalty level, LCSD had drawn reference from the maximum fine for the offence of contravention of sections 4 and 5 of the Noise Control Ordinance (Cap. 400) ("NCO") (i.e. \$10,000) which regulated noise at public places.

Acceptance of reward for music activities

10. While members in general expressed support for the proposal to prohibit unauthorized persons from accepting reward for music activities in PPGs, some members expressed concern as to whether the relevant amendments could be enforced effectively in situations where the reward was made by electronic means (e.g. WeChat Pay) or was not given on the spot. These members called on the Administration to be mindful of the different means by which reward could still be made to persons for their music activities when drafting the relevant amendments, and to plug possible loopholes. The Administration advised that LCSD would, depending on the actual circumstances, collect evidence as far as possible for the court to determine whether a person had accepted any reward in violation of the proposed new provision in section 25. The Administration further advised that the proposed new provision did not target persons who played music or sang songs in PPGs only for self-entertainment without accepting reward.

Enforcement manpower and criteria

11. Some members expressed concern that the proposed new arrangement whereby LCSD venue staff and any other persons (including nearby residents) who were annoyed by the noise could act as prosecution witnesses might create pressure on the staff as they had to institute prosecutions against persons in violation of section 25 of the Regulation and to act as prosecution witness. These members also raised concern as to whether LCSD had sufficient manpower to undertake the enforcement work.

12. The Administration explained that the proposed legislative amendment was intended to make prosecution more effective. LCSD would strengthen staff training to equip them with the necessary skills and knowledge to undertake the prosecution works. In addition, LCSD would continue to strengthen the relevant guidelines provided to its staff for monitoring and

regulating noise nuisance caused by activities at outdoor leisure venues. The Administration further advised that only authorized officers of LCSD would take enforcement action in PPGs under the Regulation. Staff hired by outsourced contractors (such as venue security staff) would only assist in duties like maintaining the order and reminding venue users to be mindful of the sound volume when the sound level was too high. Additional staff would also be deployed in PPGs where necessary to ensure effective enforcement.

13. Some members expressed concern about the criteria adopted by LCSD in determining whether a performing group had caused noise nuisance in PPGs. It was suggested that the relevant criteria should be specified in the Regulation. Members were also concerned how the venue staff could ascertain the target of prosecution from amongst a singing group (including singers, musicians and helpers, etc.).

14. The Administration advised that objective criteria would be adopted as far as possible (e.g. sound measuring devices would be used to measure and monitor the noise level generated from activities) in determining whether a performing group had caused noise nuisance in a PPG and reference would be made to the relevant stipulations in NCO. As regards how to ascertain the target of prosecution from amongst a singing group, the Administration advised that generally speaking, the person(s) who had caused the noise nuisance would be prosecuted. Depending on the actual circumstances, evidence including photos, video and closed-circuit television footage taken on the spot for ascertaining the prosecution target and for instigating prosecution would be collected as far as possible.

15. Some members suggested that the Administration should consider drawing up a "blacklist" of repeated offenders of section 25 of the Regulation and prohibit them from entering the PPGs concerned or from bringing amplifiers and/or musical instruments along when entering the PPGs concerned. The Administration advised that as section 32 of the Regulation had already empowered LCSD venue staff to remove persons contravening the Regulation from the venues, the proposed "blacklist" was deemed not necessary.

Relevant papers

16. A list of the relevant papers on the LegCo website is in the **Appendix**.

Appendix

Relevant documents on Subcommittee on Pleasure Grounds (Amendment) Regulation 2020

Committee	Date of meeting	Paper
Panel on Home Affairs	29.4.2019 (Item IV)	Agenda Minutes
Legislative Council	8.5.2019	Official Record of Proceedings (Pages 14 to 18)
Panel on Home Affairs	11.5.2020 (Item III)	Agenda

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