

For discussion on
23 March 2020

Legislative Council Panel on Home Affairs

**Amendment of Pleasure Grounds Regulation to step up control of
noise nuisance in parks managed by
Leisure and Cultural Services Department**

Purpose

This paper sets out the Government's proposal to further amend the Pleasure Grounds Regulation (Cap 132BC) (the Regulation) to step up regulation of noise nuisance in parks managed by the Leisure and Cultural Services Department (LCSD) and seek Members' advice on the proposed amendments to the Regulation.

Background

2. LCSD manages public pleasure grounds in accordance with the Regulation to ensure that activities therein are conducted in a safe and orderly manner. The department has all along been exercising flexibility where possible and justified to facilitate users' enjoyment of the public open space in different ways provided that they neither cause safety or hygiene problems, nor create unacceptable nuisance to others.

3. Singing activities, however, are found at some public pleasure grounds managed by LCSD from time to time. Some singing groups use loudspeakers or amplifiers during their activities and generate excessive noise causing noise nuisance to nearby residents. Whilst LCSD has implemented various noise control measures, noise problems are still prevalent in a few venues. LCSD has received from time to time complaints from members of the public against noise nuisance arising from musical performances or singing activities in parks. LCSD is very concerned about the situation and considers it necessary to amend the relevant provisions in the Regulation for effective control of noise nuisance in parks.

Original proposed legislative amendment

4. Currently, LCSD takes action against noise nuisance at its parks under Section 25 (the relevant provision is set out at **Annex 1**) of the Regulation. However, in order to take enforcement action under Section 25 of the Regulation, it has to be established that a “venue user” has been annoyed, and the venue user will normally be required to serve as a prosecution witness. As park keepers of LCSD (as management staff of park) and nearby residents are not regarded as venue users, LCSD cannot initiate or take enforcement action solely based on the staff's observations or complaints (mostly lodged by nearby residents) received unless a venue user is willing and is able to serve as a prosecution witness. To address the public demand for proper and effective regulation of noise nuisance in parks, we proposed an amendment to replace “user thereof” with “person” in the Regulation at the meeting of the Legislative Council Panel on Home Affairs (the Panel) on 29 April 2019. With the proposed amendment, venue users, LCSD venue staff and any other persons (including nearby residents) who are annoyed by the noise nuisance may act as prosecution witnesses in LCSD's enforcement action, thereby enabling more proactive prosecution.

5. The Panel passed the motion at **Annex 2** and requested LCSD to conduct a comprehensive review of the Regulation and adopt additional measures to step up the control of noise problems in parks, including exploring raising the maximum penalty under Section 25 of the Regulation, introducing additional mode of prosecution, combating the acts of pecuniary reward and introducing a “blacklisting” system to prohibit repeated offenders of the Regulation from entering the venues for a certain period of time. A reply by the Home Affairs Bureau to the Panel is at **Annex 3**.

Latest proposed legislative amendment

6. We attach great importance to the suggestions made by the Panel and have worked closely with the Department of Justice (DoJ) to consider different proposed amendments to enhancing the effectiveness of law enforcement, stepping up control of musical performances and singing activities and increasing the deterrent effect through a multi-pronged approach. After reviewing the relevant provisions in the Regulation comprehensively and seeking legal advice on the proposed amendments, we put forth the proposed legislative amendments in the following three aspects:

(1) Enhance the effectiveness of law enforcement

(a) Expand the definition of persons subject to annoyance

We propose to expand the definition of persons subject to annoyance in Section 25 from “any other user thereof” to cover “any person” so that LCSD officers can invoke the said provision for more effective law enforcement. Currently, LCSD takes action against noise nuisance at its parks under Section 25. However, in order to take enforcement action under Section 25, it has to be established that a “user thereof” has been annoyed, and the venue user will normally be required to stand as a prosecution witness. As park keepers of LCSD (management staff of parks) and nearby residents are not regarded as users of pleasure grounds, LCSD cannot initiate or take enforcement action solely based on the staff’s observations or complaints (mostly lodged by nearby residents) received unless the venue user is willing and is able to stand as a prosecution witness. In view of the above, it is difficult for LCSD to invoke Section 25 to regulate noise nuisance effectively. Under the proposed amendment, if LCSD park keepers and any other persons (in particular the nearby residents) are annoyed by the noise, they may act as prosecution witnesses in LCSD’s enforcement action, enabling more effective regulation of noise nuisance in public pleasure grounds.

(2) Step up control of musical performances and singing activities

(b) Prohibit acceptance of pecuniary reward

The root of noise nuisance problems in some parks lies in the acts of accepting pecuniary reward for musical performances and singing activities. At present, the Regulation does not prohibit members of the public from tipping others in the form of “lai see” in parks. Hence, persons who play music, sing songs or stage performances accept “lai see” from members of the public in parks are not in breach of the regulation. To tackle the situation, LCSD proposes to include a new provision in Section 25 prohibiting unauthorised persons from playing music, singing songs or carrying out other music-related activities (including dancing with background music) in parks and accepting any money or reward (e.g. “lai see”). Persons who play music, sing songs or carry out other music-related activities, regardless of whether they initiate the solicitation of money or reward or not, will be deemed to have contravened the new provision and hence, violated the Regulation. We believe that the new provision would be able to stop persons seeking to obtain money or reward through the above-mentioned activities in parks.

Those persons who play music or sing songs in parks for self-entertainment without accepting money or reward will not be affected by the new provision as long as they do not cause nuisance to others.

(c) Put up notice to stipulate venue rules

It is observed that musical instruments and amplifiers are used for musical performances and singing activities in some parks, causing excessive noise and affecting other park users. Should such activities be carried out in the vicinity of residential areas, it will even cause noise nuisance. In view of this, LCSD proposes to include a new provision in Section 25 empowering the Director of Leisure and Cultural Services to put up notices in parks with noise problems and stipulate the need to comply with the provisions in the playing of musical instruments and singing activities.

LCSD understands that there is an expectation that the Government has to be more proactive in tackling the noise problems in parks. This provision in relation to the prevention of noise nuisance is therefore specifically introduced so that faster and more flexible response can be made to cater for the situation of different venues. For instance, if there are often singing activities in a park at night causing nuisance to nearby residents, LCSD may restrict members of the public from bringing large bulky amplifiers into the park for use during a specific period. Moreover, if there are singing activities at a location in a park causing nuisance to nearby residents, LCSD may put up notices to stipulate rules prohibiting the public to engage in such activities at a designated location inside the park. With the provision in effect, any person (whether causing noise nuisance or not) who does not comply with the provision stipulated in the notices will be deemed to be in breach of the provision. LCSD officers may prosecute the offenders in light of the circumstances. To effectively respond to the change in form of musical performances and singing activities in parks, revisions on the provisions stipulated in the notices can be tailor-made as necessary. The provisions in the notices in relation to prevention of noise nuisance will be drawn up with regard to the actual circumstances of each park.

(3) Increase the deterrent effect

(d) Raise the penalty level

At present, an offender of Section 25 of the Regulation is liable on conviction to a fine at Level 1 (maximum fine of HK\$2,000) and

imprisonment for 14 days. LCSD has reviewed such arrangement in response to the Panel's request of raising the penalty level. Currently, Sections 4 and 5 of the Noise Control Ordinance (Cap. 400) regulate noise from public places with the maximum fine of \$10,000, which is five times the maximum penalty under Section 25 of the Regulation. Besides, having reviewed the convicted cases under Section 25 of the Regulation since 2010, LCSD notices that the penalties for these cases range from \$300 to \$1,200 and the average fine is \$700. Based on the above information, LCSD acknowledges that the current level of fines under Section 25 is on the low side and is insufficient in deterring persons from violating the Regulation. Hence, LCSD has proposed to raise the fine level under the provision (including the above-mentioned amendments proposed to be included in Section 25) to Level 3 (maximum fine of \$10,000) and maintain the imprisonment term of 14 days.

Other control measures

7. Apart from amending the Regulation, LCSD will also improve its guidelines on venue management to assist its staff in monitoring singing activities in parks. For instance, in handling applications for hiring outdoor leisure venues of LCSD for activities of non-designated uses, LCSD will make reference to the “Noise Control Guidelines for Music, Singing and Instrument Performing Activities” issued by the Environmental Protection Department in formulating the Noise Control Guidelines. For activity involving the use of amplifiers (e.g. stage performance), the organiser is required to comply with the related Noise Control Guidelines to control the sound level of the activity (including rehearsal and main event) and ensure that it does not exceed the background noise level for more than 10 decibels. The organiser is also required to deploy staff to monitor the sound level of the activity and bring it down immediately in case of excessive sound level detected or upon receipt of complaints.

8. As for parks with frequent singing activities by members of the public, venue staff are equipped with devices for measuring decibel level to measure the sound level of the activities from time to time. If the sound level from the activities is excessive, venue staff will immediately advise the person involved to bring down the sound level. As regards those parks which have received complaints of noise nuisance from members of the public from time to time, LCSD has drawn reference to past complaints as well as views of nearby residents and concerned

District Councils and work out a corresponding sound level standard having due regard to the situation of individual parks for reference of the staff in issuing advice. The staff in the park will also closely monitor the activities and take timely follow-up actions. Advice will be given by staff immediately when the sound level from singing activities is found to be exceeding a certain level of decibel above the background noise level.

9. On publicity and education, LCSD has put up banners in parks and displayed notices at prominent locations reminding members of the public to be mindful of the sound emitted from their activities in order not to cause nuisance to others. Besides, LCSD will monitor closely noise nuisances in parks and carry out joint operations with the Police in those parks with noise problem from time to time for combating violation of the provisions. On the other hand, Section 32 of the Regulation empowers LCSD officers to remove persons contravening the Regulation from the venues. LCSD officers will take law enforcement actions in light of the actual situation and apply the provision where appropriate to follow up on noise-related complaints and remove persons contravening the Regulation from venue by virtue of the power vested under Section 32 where necessary.

The Way Forward

10. We are working closely with DoJ to finalise the proposed legislative amendments, with a view to putting forth the proposed amendments to the Regulation for the Legislative Council meeting in May for negative vetting for early implementation of the amended Regulation.

Advice Sought

11. Members are invited to note the proposed legislative amendments and express their views.

Leisure and Cultural Services Department
March 2020

《遊樂場地規例》(第 132BC 章) 第 25 條

25.

音樂及唱歌

除非署長已以書面准許操作或彈奏某種樂器，或利用某種樂器發出任何聲響，或唱歌，否則任何人不得在對任何其他使用遊樂場地的人造成煩擾的情況下，在遊樂場地內操作或彈奏任何樂器或其他器具(包括唱機或無線電器具)，或利用該等樂器或其他器具發出任何聲響，或唱歌。

(1999 年第 78 號第 7 條)

Section 25 of Pleasure Grounds Regulation (Cap. 132BC)

25.

Music and singing

Save where the Director 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.

(78 of 1999 s. 7)



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LEGISLATIVE COUNCIL

來函檔號 YOUR REF : CB2/PL/HA
本函檔號 OUR REF : 3919 3203
電 話 TELEPHONE : 2869 6794
圖文傳真 FACSIMILE :
電郵地址 E-mail : mmskwok@legco.gov.hk

(By fax and by post)
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30 April 2019

Mr LAU Kong-wah, JP
Secretary for Home Affairs
Home Affairs Bureau
12/F, West Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Mr LAU,

Panel on Home Affairs

Motion passed at the meeting on 29 April 2019

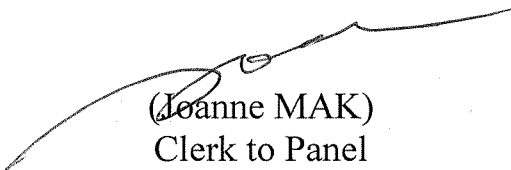
At its meeting on 29 April 2019, the Panel passed a motion under agenda item IV "Use and management of public open space managed by the Leisure and Cultural Services Department". The wording of the motion is enclosed.

I should be grateful if the Administration could provide its written response (bilingual version) to the above motion via e-mail (mmskwok@legco.gov.hk) by **Wednesday, 15 May 2019** for circulation to Panel members.

Please note that in line with usual practice, the Administration's paper will be made available to the media/public and placed in the Library of the Legislative Council ("LegCo"), unless you advise otherwise. It will also be made available on the LegCo website.

With best regards,

Yours sincerely,


(Joanne MAK)
Clerk to Panel

Encl

c.c. Miss Iris WONG, Home Affairs Bureau (E-mail: ihtm Wong@hab.gov.hk)

民政事務委員會

在2019年4月29日會議上就議程項目IV
"康樂及文化事務署轄下公眾休憩用地的使用及管理"
通過的議案

近年經常有市民投訴指有表演者於公園內使用音響或樂器作唱歌、跳舞等表演，在表演過程中發出的聲浪對公園其他使用者與附近居民構成嚴重滋擾，當中部分更涉及金錢打賞行為。儘管康文署建議修訂《遊樂場地規例》，讓公園附近居民及康文署職員等人士都可成為控方證人，以加強規管場內噪音，但由於政府未有全面檢討《遊樂場地規例》，相信即使落實新建議後噪音滋擾問題亦無法根治。就此，本委員會促請政府：

- 一、全面檢討《遊樂場地規例》，積極處理表演活動引致噪音滋擾及金錢打賞等問題，就何謂滋擾制訂客觀的標準，以平衡不同場地使用者的權益，並為前線人員制訂清晰的指引，在場地出現混亂而前線人員難以自行處理時應該尋求警方協助執法；
- 二、研究提高《遊樂場地規例》第25條的最高罰則，包括設立遞進式的定額罰款，接觸犯規例次數提高罰款款額，以阻嚇多次造成噪音滋擾的人士；及
- 三、研究賦權前線人員對違例者作出不同程度的執法，包括要求不聽勸籲者離開公園，以"黑名單"制禁止多次觸犯《遊樂場地規例》的人士在一定時期內進入公園等。

動議人：劉國勳議員, MH

和議人：鄭泳舜議員, MH

(Translation)

Panel on Home Affairs

Motion passed under agenda item IV

"Use and management of public open space managed by the Leisure and Cultural Services Department" at the meeting on 29 April 2019

In recent years, members of the public have often complained that the use of audio equipment or musical instruments by performers in their singing, dancing or other performances in parks has created excessive noise and caused serious nuisances to other park users and nearby residents, and the giving of tips was involved in some performances. The Leisure and Cultural Services Department ("LCSD") has proposed to amend the Pleasure Grounds Regulation ("the Regulation") to include nearby residents and LCSD staff as the prosecution witness so as to step up the control of noise nuisances in parks. However, in the absence of a comprehensive review of the Regulation, the implementation of the new proposal is not expected to solve the noise nuisance problem at its roots. In this connection, this Panel urges the Government to:

1. conduct a comprehensive review of the Regulation to actively address, among other issues, noise nuisances caused by performing activities and the giving of tips to performers, prescribe an objective standard of "nuisance" to balance the interests of various venue users, and formulate clear guidelines and enable frontline staff to seek assistance from the Police in taking enforcement actions in case the venues are in chaotic situations beyond the control of the staff;
2. study raising the maximum penalty under section 25 of the Regulation, including setting up a progressive fixed penalty system to increase the penalty level according to the number of times of breaches to deter repeated offenders of noise nuisance; and
3. study empowering frontline staff to take enforcement actions with various severity, such as requesting park users who ignore advice from park staff to leave and drawing up a "blacklist" to prohibit repeated offenders of the Regulation to enter the parks within a certain period of time.

Moved by: Hon LAU Kwok-fan, MH

Seconded by : Hon Vincent CHENG, MH

政府總部
民政事務局

香港添馬添美道二號
政府總部西翼十二樓



GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU

12TH FLOOR, WEST WING,
CENTRAL GOVERNMENT OFFICES,
2 TIM MEI AVENUE,
TAMAR,
HONG KONG.

本函檔號 Our Ref: HAB/R&S 4035/1/3
來函檔號 Your Ref: CB2/PL/HA

電話號碼 Tel. No.: 3509 8062
傳真號碼 Fax No.: 2519 7404

28 May 2019

Ms Joanne MAK
Clerk to the Panel on Home Affairs
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Mak,

Panel on Home Affairs
Motion passed at the meeting on 29 April 2019

Thank you for your letter dated 30 April 2019. With regard to the motion passed under agenda item IV “Use and management of public open space managed by the Leisure and Cultural Services Department”, our response is set out below.

1. At present, if enforcement action is taken by the Leisure and Cultural Services Department (LCSD) under section 25 of the Pleasure Ground Regulation (Cap. 132BC) (the Regulation), it has to be established that a “venue user” had been annoyed, and the venue user has to be willing and able to serve as a prosecution witness. Otherwise, LCSD cannot take enforcement action solely based on staff observation or complaints received. To address public demand for proper and effective regulation of noise nuisance in parks, we propose a legislative amendment to section 25 of the Regulation by replacing “user thereof” with “person”. Under the proposed amendment, 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, making the prosecution action more proactive.

LCSD provides staff with guidelines for monitoring and regulating noise from activities carried out by groups at outdoor leisure venues. In setting 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. 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. Meanwhile, 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.

Members of the public are not prohibited from tipping others in the form of “lai see” in parks by the Regulation or other legislation at present. Hence, performers who accept “lai see” from members of the public in parks are not in breach of the legislation. However, it is up to the court to adjudicate each prosecution case with regard to the circumstances of the case and evidence found. LCSD will continue to seek legal advice regarding pecuniary reward given in appreciation of singing activities.

2. At present, any person in breach of the Regulation is liable to a fine at level 1 (maximum \$2,000) and an imprisonment for 14 days on conviction. The court will determine the appropriate level of penalty taking into account the circumstances of the case. LCSD is open-minded to the suggestion of increasing the penalty level in section 25 of the Regulation or introducing new means of prosecution and will actively study it.
3. Section 32 of the Regulation empowers authorised LCSD officers to remove persons who contravene the provisions of the Regulation from the venues concerned. LCSD will seek legal advice and define clearly how venue management staff will use the power effectively for proper regulation of venues. Such action by venue management staff may lead to unnecessary confrontation between

law enforcement officers and performers as well as other persons, the department must therefore act with caution. LCSD officers will assess the actual situation at the time of enforcement and seek assistance from the Police as necessary.

LCSD had sought legal advice on the suggestion of prohibiting repeated violators of the Regulation from entering the venues concerned for a certain period of time, and was advised that it might involve complicated judicial procedures, such as filing an application to the court for an injunction, and should therefore be handled carefully. Nonetheless, LCSD will seek legal advice and consider other feasible means to step up measures against non-compliant activities in venues.

Yours sincerely,



(Ms Elania Luk)
for Secretary for Home Affairs

c.c.:

Director of Leisure & Cultural Services
[Attn: Sr Staff Offr(HQ) (Fax no: 2602 1480)]