

立法會
Legislative Council

LC Paper No. CB(2)724/19-20(06)

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Panel on Home Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 23 March 2020**

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

Purpose

This paper provides background information on the Administration's proposed amendment to the Pleasure Grounds Regulation (Cap. 132BC) ("the Regulation") and summarizes the relevant discussion of the Panel on Home Affairs ("the Panel") on the subject.

Background

Management of public pleasure grounds

2. According to the Administration, the Leisure and Cultural Services Department ("LCSD") manages public pleasure grounds ("PPGs") according to the Regulation, and from time to time, sets aside new sports and leisure venues to be used as PPGs and removes those which have ceased to be used as such in accordance with section 106 of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO").¹

Section 25 of the Pleasure Grounds Regulation and the Administration's amendment proposal

3. Currently, LCSD relies on section 25 of the Regulation to take action

¹ Sections 106(1) and 106(6) of PHMSO provide that LCSD, as the Authority for the purposes of these two subsections, may by order set aside places for use as PPGs, and may by order amend, or add to or delete from, the Fourth Schedule of PHMSO. Section 106(2) of PHMSO provides that the places specified in the Fourth Schedule shall be deemed to have been set aside under section 106(1) of PHMSO for use as PPGs.

against noise nuisance at its parks.² 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 LCS D's park keeper (as the manager of the park) and the residents living nearby are not regarded as a venue user, LCS D 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.

4. When the Panel was briefed on the use and management of public open space managed by LCS D at its meeting on 29 April 2019, the Administration indicated that against the background set out in paragraph 3 above, LCS D had difficulties in relying on section 25 of the Regulation to effectively control the noise nuisance. To address public demand for proper and effective control of noise nuisance in public parks, the Administration proposed a simple legislative amendment to section 25 of the Regulation by replacing "user thereof" with "person". The Administration explained that with the proposed amendment, LCS D's park keepers and any other persons (in particular those nearby residents) who were annoyed by the noise could be the prosecution witness in LCS D's enforcement action. The Administration considered that the amendment would help promote responsible and respectful behaviour in PPGs and deter irresponsible uses of loudspeakers and equipment alike which caused annoyance to park users, nearby residents or park keepers.

Relevant discussion of the Panel on Home Affairs

Penalties for contravention of section 25 of the Pleasure Grounds Regulation

5. While members in general expressed support for the Administration's proposal to amend section 25 of the Regulation, some members were of the view that the maximum penalty for breach of section 25 of the Regulation, currently pitched at a fine at level 1 (\$2,000) and an imprisonment for 14 days, lacked sufficient deterrent effect. In their view, higher penalties should be imposed on first-time and repeated offenders. It was suggested that the penalty level should be raised to \$10,000 to align with that under sections 4 and 5 of the Noise Control Ordinance (Cap. 400) ("NCO") which provided control over noise from domestic premises and public place.

² 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."

6. The Administration explained that the same penalty level (i.e. a fine at level 1 and imprisonment for 14 days) was prescribed for contravention of various provisions of the Regulation. Nevertheless, the Administration was open-minded to the suggestion and would take into account the views of relevant government departments and the public, and seek legal advice in considering the way forward.

7. Some members also raised concern that the tipping from members of the public (e.g. in the form of "lai see") to the performers might have by far exceeded the penalty level. They urged the Administration to address the issue of giving tips to performers. The Administration advised that while begging and sale of goods were not allowed in PPGs, members of the public were not prohibited from tipping others in the form of "lai see" in PPGs under the Regulation or other existing legislation. That said, the Administration undertook that LCSD would continue to look into the issue.

Enforcement issues

8. 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.

9. 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.

10. 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 in addition to the noise level, the pitch should be taken into consideration when setting the criteria. 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.).

11. 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. LCSD would, depending on the actual circumstances, collect evidence as far as possible, including photos, video and closed-circuit television footage taken on the spot, for ascertaining the prosecution target and for instigating prosecution.

12. Some members further suggested that restriction might be imposed on the size of the sound amplification devices brought into PPGs. Some other members suggested that LCSD should exercise the power under section 32 of the Regulation to remove persons who had contravened the provisions of the Regulation from the venues concerned. In their view, the Administration should consider prohibiting repeated offenders from entering the PPGs concerned.

13. The Administration advised that the suggestions of removing offenders of the Regulation from PPGs or prohibiting repeated offenders from entering PPGs had to be considered carefully as it might lead to unnecessary confrontation between LCSD venue staff and performers or other persons concerned. LCSD would seek legal advice in this regard where appropriate.

14. At the meeting on 29 April 2019, the Panel passed a motion urging the Administration to, among other things, conduct a comprehensive review of the Regulation to actively address problems such as noise nuisance caused by performing activities, and prescribe an objective standard of "nuisance" to balance the interests of various venue users. The wording of the motion and the Administration's response are in **Appendices I** and **II** respectively.

Relevant Legislative Council question

15. At the Council meeting of 8 May 2019, Hon KWONG Chun-yu raised a written question on "Noise nuisance caused by music performers". The question and the Administration's reply are in **Appendix III**.

Latest development

16. The Administration will consult the Panel on its latest proposal for amendment of the Regulation to step up control on the noise nuisances in parks managed by LCSD at the next meeting on 23 March 2020.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
19 March 2020

立法會CB(2)1342/18-19(01)號文件
LC Paper No. CB(2)1342/18-19(01)

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

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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)]

Appendix III**Press Releases**

LCQ3: Noise nuisance caused by music performances in parks

Following is a question by the Hon Kwong Chun-yu and a written reply by the Secretary for Home Affairs, Mr Lau Kong-wah, in the Legislative Council today (May 8):

Question:

It has been reported that from time to time, quite a number of people stage music performances without permission in the parks under the Leisure and Cultural Services Department (LCSD), and some performers generate loud noise by using amplifiers during their performances. For many years, Tuen Mun Park has been a black spot of music performances causing noise nuisance. Notwithstanding that LCSD has set up, at corners in the Park that are far away from residential areas, two self-entertainment zones for registered music activities without the use of amplifiers, very few music performers have applied for the use of the zones. They continue to use amplifiers to stage performances elsewhere in the Park, thereby causing noise nuisance to visitors and nearby residents. In this connection, will the Government inform this Council:

(1) of the respective numbers of persons staging music performances in the parks under LCSD who were (i) issued warning letters by LCSD under the Noise Control Guidelines and (ii) prosecuted by the Noise Control Authority under the Noise Control Ordinance (Cap. 400), in the past three years for generating excessive noise; the number of convictions and, among them, the number of cases of repeated offences;

(2) whether the persons who stage performances, (i) with or (ii) without permission respectively, in the parks under LCSD and receive rewards or remunerations contravene the Pleasure Grounds Regulation (Cap. 132BC) or other legislation; and

(3) of the respective numbers of applications received and approved by LCSD in the past three years for staging performances in the self-entertainment zones in Tuen Mun Park; given that the authorities have recently proposed that Cap. 132BC be amended for more effective control of the noise nuisance problem in the parks under LCSD, whether LCSD has assessed if such measure can eradicate the noise problem caused by music performers staging performances in Tuen Mun Park?

Reply:

President,

My reply to the Hon Kwong Chun-yu's question is as follows:

(1) The noises referred to in the "Noise Control Guidelines" fall under the regulation of the Noise Control Ordinance (Cap. 400), the provisions of which are enforced by the Director of Environmental Protection and the Commissioner of Police. The Leisure and Cultural Services Department (LCSD) takes enforcement actions in its public pleasure grounds (PPGs) to step up regulation of noise nuisance primarily under section 25 of the Pleasure Grounds Regulation (Cap. 132BC).

Section 25 of the Pleasure Grounds Regulation stipulates that "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."

Under normal circumstances, members of the public who play music instruments or sing songs in parks for self-entertainment will not be interfered by park keepers as long as these activities do not cause nuisance to other venue users. However, when excessive noise is generated from the activities and a complaint of annoyance is lodged to LCSD, management staff of the venue will advise the person concerned to lower the volume. If the advice is ignored, the management staff will, having regard to the actual circumstances, consider instigating prosecution against the person(s) in breach of the regulation under section 25 of the Pleasure Grounds Regulation when there is a venue user who had been annoyed willing to act as prosecution witness and there is sufficient evidence. There were two successful prosecutions involving Tuen Mun Park in the past three years.

(2) At present, the Pleasure Grounds Regulation and other legislation do not prohibit members of the public from tipping others in the form of "lai see" in parks. 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 evidences found.

LCSD will issue a letter of approval to the successful group applicant for using a LCSD venue for non-designated activities (e.g. performance activities). The letter will set out the conditions for hiring the leisure venue for non-designated use. For example, the hirer shall not allow any distribution or sale of refreshments or commodities, or charge admission fees or solicit donations from participants in the activity, or accept any form of pecuniary reward except prior permission has been given by LCSD. LCSD may demand the hirer to surrender the venue if the hirer breaches any of the department's conditions of use.

(3) Two self-entertainment zones and one Amphitheatre in Tuen Mun Park are available for application by groups for singing activities, etc. The numbers of applications received and approved regarding the above-mentioned self-entertainment zones and Amphitheatre in the past 3 years (May 2016 to April 2019) are set out in the table below:

Year	Number of applications		Total	Number of approved applications	
	Self-entertainment zone	Amphitheatre		Self-entertainment zone	Amphitheatre
May 2016 to April 2017	423	745	1 168	370	304
May 2017 to April 2018	382	699	1 081	372	297
May 2018 to April 2019	390	812	1 202	370	279
Total	1 195	2 256	3 451	1 112	880

LCSD has been monitoring closely the noise nuisance problem and implemented a number of noise control measures such as designating suitable areas for activities by singing groups, conducting joint operation with the Police, strengthening manpower to monitor singing activities and drawing up house rules to regulate the use of speakers in designated parks, so as to mitigate and regulate the noise nuisance in parks. At present, if enforcement action is taken by LCSD under section 25 of the Pleasure Ground

Regulation, it has to be established that a "venue user" had been annoyed, and the venue user has to be willing to serve as a prosecution witness. To address public demand for proper and effective regulation of noise nuisance in parks, we propose a simple legislative amendment to section 25 of Cap. 132BC by replacing "user thereof" with "person". The amendment will help promote responsible and respectful behaviours in PPGs and deter the irresponsible use of loudspeakers and similar equipment which cause annoyance to other park users, nearby residents or park keepers. Under the proposed amendment, LCSD park keepers and any other persons (in particular the nearby residents) who are annoyed by the noise may act as prosecution witnesses in LCSD's enforcement action. For more effective regulation of noise nuisance in PPGs, we aim to table the amendment regulation at meeting of the Legislative Council for negative vetting within this year.

Ends/Wednesday, May 8, 2019

Issued at HKT 12:43

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

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)

Council Business Division 2
Legislative Council Secretariat
19 March 2020