

# LEGISLATIVE COUNCIL BRIEF

## AMENDMENT OF THE PLEASURE GROUNDS REGULATION (Cap. 132BC)

### INTRODUCTION

The Secretary for Home Affairs, in his capacity as the Authority under section 109 of Public Health and Municipal Services Ordinance (Cap. 132), may, in relation to public pleasure grounds (PPGs), make regulations prescribing or providing for preservation of good order and prevention of abuses and nuisances.

2. We propose to introduce amendments to the Pleasure Grounds Regulation (Cap. 132BC) (the Regulation) to enhance the regulation of carrying out of music or singing activities and other related acts in PPGs. The Amendment Regulation is at **Annex A** to this Brief.

A

### BACKGROUND

3. The Leisure and Cultural Services Department (LCSD) manages PPGs in accordance with the Regulation. LCSD has all along been exercising flexibility where possible and facilitating users' enjoyment in PPGs in different ways as long as they do not cause safety or hygiene problems, or create unacceptable nuisance to others. In the process, we have to strike a fine balance between the diverse and conflicting needs of the users.

4. However, members of the public often carry out in PPGs managed by LCSD the following activities (music activities): operating or playing, or making any sounds by means of, musical or other instrument, or singing songs. Some singing groups use loudspeakers or amplifiers and generate excessive noise, thereby causing nuisance to nearby residents. Whilst LCSD has implemented various noise control measures, such as putting up advisory 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. 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 is very concerned about the situation and considers it necessary to amend the relevant provisions in the Regulation for effective tackling of noise nuisance in PPGs.

## JUSTIFICATIONS FOR LEGISLATIVE AMENDMENT

5. Currently, LCSD takes enforcement actions against noise nuisance in its PPGs under section 25 of the Regulation. However, in order to take enforcement action under that section, it has to be established that “any other user thereof” (venue user) has been annoyed, and the venue user will normally be required to serve as a prosecution witness. As LCSD staff and nearby residents are not regarded as venue users, LCSD cannot initiate or take enforcement action solely based on the observations of the LCSD staff or complaints received (mostly from nearby residents) unless a venue user is willing and able to serve as a prosecution witness. To address the public’s demand for proper and effective regulation of noise nuisance in PPGs, we proposed an amendment to replace “user thereof” with “person” in section 25 of 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 staff and any other persons (including nearby residents) who are annoyed by the noise nuisance may act as prosecution witnesses, thereby enabling more proactive enforcement and prosecution.

B 6. The motion appended at **Annex B** was endorsed by the Panel and the Administration was requested to conduct a comprehensive review of the Regulation and to study the adoption of additional measures to step up control of noise problems in PPGs, 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 for a certain period of time. A reply by the Home Affairs Bureau to the Panel is attached at **Annex C**.

C

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

**(1) Enhance the effectiveness of law enforcement**

**(a) *Expand the scope of affected persons***

Section 25 of the Regulation prohibits a person from carrying out a music

activity to the annoyance of certain persons (affected persons) unless the Director of Leisure and Cultural Services (Director) has permitted in writing the carrying out of the music activity. The scope of the affected persons is currently limited to “any other user thereof” (i.e. any other venue user). For reasons set out in paragraph 5, we propose to expand the scope of the affected persons by replacing “user thereof” with “person” to enable more effective law enforcement in respect of noise nuisance arising from music activities in PPGs.

## **(2) Step up control of music activities**

### ***(b) Prohibit solicitation of, acceptance of, or agreement to receive reward for music activity or related activity***

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. At present, the Regulation does not prohibit such persons from accepting rewards for their music activities. Hence, they can do so in PPGs without contravening the Regulation. To tackle the situation, we propose to include a new provision in section 25 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. It is also proposed that a contravention of this provision be made a criminal offence under section 30 of the Regulation. We believe that this new provision can tackle the problem of people being given reward for carrying out the above-mentioned activities in PPGs. 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.

### ***(c) Display notice to specify requirements in relation to the carrying out of music activities in PPGs and prohibit persons from carrying out music activities there that do not comply with the requirements***

It is observed that musical instruments and amplifiers are often used for music activities in some PPGs, causing excessive noise and thereby affecting other PPG users and sometimes even nearby residents. In view of this, we propose to include a new provision in section 25 of the Regulation to empower the Director to display notices in a PPG with noise problems and specify requirements in relation to the carrying out of any music activity there.

We understand that the public expects the Government to tackle noise problems in PPGs more proactively. This provision, which aims to prevent noise nuisance, is specifically introduced so that faster and more flexible measures can be made to cater for conditions of different PPGs. For instance, if there are often music activities in a PPG at night, causing nuisance to nearby residents, notice may be displayed in the PPG to restrict persons from bringing large bulky amplifier there for use at night. Moreover, if music activities which cause nuisance to nearby residents often take place at a particular location in a PPG, notices may be displayed in the PPG to prohibit the carrying out of such activities at a designated location in the PPG.

To effectively respond to changes in forms of music activities in PPGs, targeted revisions can be made to the requirements specified in a notice displayed there on need basis. In devising the requirements, regard will be given to the actual situation of each PPG.

Furthermore, we propose to introduce a new provision in section 25 of the Regulation to prohibit persons from carrying out in a PPG a music activity that does not comply with a requirement specified in a notice conspicuously displayed there unless the person has obtained the Director's written permission to do so. It is also proposed that a contravention of this provision be made a criminal offence under section 30 of the Regulation.

### **(3) Increase the deterrent effect**

#### ***(d) Raise the fine level***

At present, under section 30 of the Regulation, a person who contravenes section 25 of the Regulation is liable on conviction to a fine at level 1 (i.e. a maximum fine of \$2,000) and imprisonment for 14 days. LCS D has reviewed this arrangement in response to the Panel's request for the Administration to study raising the maximum penalty for the offence of contravening section 25 (Offence). Currently, sections 4 and 5 of the Noise Control Ordinance (Cap. 400) regulate the noise from public places with the maximum penalty of a HK\$10,000 fine, which is 5 times the maximum fine for the Offence. Besides, having reviewed the convictions in respect of the Offence since 2010, LCS D found that the fines imposed in these cases ranged from \$300 to \$1,200, with the average being \$700. Based on the above information, it would appear that the current level of fines for the Offence is low with insufficient deterrent effect. Hence, we propose to raise the fine level for the Offence to level 3 (i.e. a maximum fine of \$10,000), but recommend no

change to the imprisonment term of 14 days.

## **AMENDMENT OF THE REGULATION**

8. Currently, sections 25 and 30 of the Regulation read as follows –

### **“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.”

### **“30. Offences and penalties**

Any person who—

- (a) contravenes any of the provisions of section 6, 7, 8, 9, 10, 11, 12, 13, 14(1) or (3), 15, 16, 18(1) or (2), 19, 20, 21, 22, 23, 23A, 25, 26, 27 or 29;
- (b) when driving any vehicle in a pleasure ground, refuses or wilfully fails to stop when called upon to do so, by signal or otherwise, by any keeper or other public officer acting in the execution of his duty; or
- (c) fails to comply with any of the requirements of any notice displayed under the provisions of section 17 or 24,

shall be guilty of an offence and shall be liable on summary conviction to a fine at level 1 and to imprisonment for 14 days.”

9. In line with the proposed amendments at paragraph 7, the Amendment Regulation replaces section 25 and amends section 30 to, mainly, provide that –

- (a) the Director may, by notice conspicuously displayed in a pleasure ground, specify any requirement in relation to the carrying out of any music activity there (new section 25(1));
- (b) a person must not carry out in a pleasure ground 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 (new section 25(2));

- (c) a person must not carry out in a pleasure ground 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 (new section 25(3));
- (d) a person must not solicit, or accept, or agree to receive, in a pleasure ground, any reward for any music activity or related activity carried out there unless the person has obtained the Director's written permission to do so (new section 25(4)); and
- (e) the maximum fine for the Offence is a level 3 fine (i.e. \$10,000)(as opposed to a level 1 fine of \$2,000 as provided under the existing section 30) (new section 30(2)).

## **LEGISLATIVE TIMETABLE**

10. The legislative timetable is as follows –

Publication in the Gazette:	22 May 2020
Tabling at the Legislative: Council for Negative Vetting	27 May 2020
Commencement:	24 July 2020

## **IMPLICATIONS OF THE AMENDMENTS**

11. The amendments are in conformity with the Basic Law, including the provisions concerning human rights. It has no civil service, economic, productivity, sustainability, family or gender implication.

12. The amendments have financial and environmental implications. Since the financial implications are unlikely to be significant, LCSD will absorb any additional financial resources incurred from the enforcement of the Amendment Regulation. Besides, we expect the amendments will have positive environmental implications as the enhanced measures in regulating music activities in PPGs through a multi-pronged strategy can

help prevent neighbourhood noise in the community.

## **PUBLIC CONSULTATION AND PUBLICITY**

13. The Panel was consulted on the proposed amendments on 11 May 2020 and rendered its support. The amendment to the Regulation was published in the Gazette on 22 May 2020.

## **ENQUIRY**

14. Please contact Mrs Doris FOK, Assistant Director (Leisure Services)1, at 2601 8966 for enquiries on this subject.

**Home Affairs Bureau**  
**Leisure and Cultural Services Department**  
**19 May 2020**

## Pleasure Grounds (Amendment) Regulation 2020

(Made by the Secretary for Home Affairs under section 109 of the Public Health and Municipal Services Ordinance (Cap. 132))

### 1. Commencement

This Regulation comes into operation on 24 July 2020.

### 2. Pleasure Grounds Regulation amended

The Pleasure Grounds Regulation (Cap. 132 sub. leg. BC) is amended as set out in sections 3 and 4.

### 3. Section 25 substituted

Section 25—

**Repeal the section**

**Substitute**

#### “25. Music activities etc.

- (1) The Director may, by notice conspicuously displayed in a pleasure ground, specify any requirement in relation to the carrying out of any music activity there.
- (2) A person must not carry out in a pleasure ground a music activity that does not comply with a requirement specified under subsection (1) unless the person has obtained the Director's written permission to do so.
- (3) A person must not carry out in a pleasure ground a music activity to the annoyance of any other person unless the first-mentioned person has obtained the Director's written permission to carry out the activity there.

- (4) A person must not solicit or accept, or agree to receive, in a pleasure ground any reward for any music activity or related activity carried out there unless the person has obtained the Director's written permission to do so.

- (5) For subsection (4), it does not matter—

- (a) to whom and in what way the reward is or is to be given; and
- (b) by whom the music activity or related activity is carried out.

- (6) In this section—

*music activity* (音樂活動) means—

- (a) 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
- (b) the singing of any song;

*related activity* (相關活動), 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;

*reward* (酬賞) includes any gift, payment, service, favour, benefit or advantage.”

### 4. Section 30 amended (offences and penalties)

- (1) Section 30—

**Renumber the section as section 30(1).**



- (2) Section 30(1)(a)—

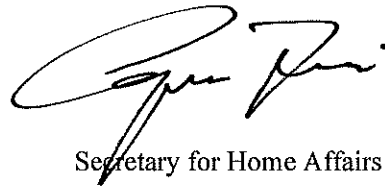
**Repeal**

“25,”.

- (3) After section 30(1)—

**Add**

- “(2) A person who contravenes section 25(2), (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 14 days.”.



Secretary for Home Affairs

2020 May 15

**Explanatory Note**

This Regulation amends the Pleasure Grounds Regulation (Cap. 132 sub. leg. BC) (*principal Regulation*) to enhance the regulation of music or singing activities (*music activities*) and other related acts carried out in pleasure grounds so as to tackle noise nuisance problems caused by such music activities.

2. In particular, section 3 replaces section 25 of the principal Regulation to prohibit the following acts done without the written permission of the Director of Leisure and Cultural Services—
  - (a) carrying out in a pleasure ground a music activity that does not comply with a requirement specified in a notice conspicuously displayed there (new section 25(2));
  - (b) carrying out in a pleasure ground a music activity to the annoyance of “any other person” (as opposed to “any other user thereof” as provided under the existing section 25 of the principal Regulation) (new section 25(3)); and
  - (c) soliciting or accepting, or agreeing to receive, in a pleasure ground any reward for any music activity or related activity carried out there (new section 25(4)).
3. Section 4 amends section 30 of the principal Regulation to increase the maximum fine for the offence of contravening section 25 of the principal Regulation from level 1 (i.e. \$2,000) to level 3 (i.e. \$10,000).



立法會  
LEGISLATIVE COUNCIL

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(By fax and by post)  
(Total : 3 pages)

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

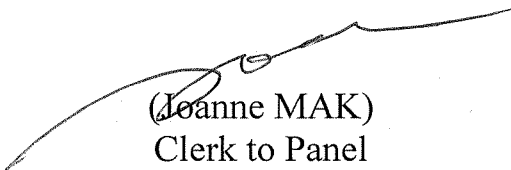
At its meeting on 29 April 2019, the Panel passed a motion under agenda item IV "Use and management of public open space managed by the Leisure and Cultural Services Department". The wording of the motion is enclosed.

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](mailto: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](mailto: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



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HOME AFFAIRS BUREAU

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來函檔號 Your Ref: CB2/PL/HA

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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)]