

# 立法會 *Legislative Council*

LC Paper No. CB(4)1439/20-21(03)

Ref : CB4/BC/11/20

## **Bills Committee on National Flag and National Emblem (Amendment) Bill 2021**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the National Flag and National Emblem (Amendment) Bill 2021 ("the Amendment Bill"). It also summarizes the major views and concerns expressed by the Panel on Constitutional Affairs ("the Panel") during its discussion of the proposed direction and an outline of the amendments to the National Flag and National Emblem Ordinance ("NFNEO").

#### **Background**

2. The amendments to the Law of the People's Republic of China on the National Flag ("the National Flag Law") and the Law of the People's Republic of China on the National Emblem ("the National Emblem Law") were endorsed at the 22<sup>nd</sup> session of the Standing Committee of the 13<sup>th</sup> National People's Congress on 17 October 2020, and have come into force since 1 January 2021.

3. The National Flag Law and the National Emblem Law have been listed in Annex III to the Basic Law<sup>1</sup> and applied locally in the Hong Kong Special Administrative Region ("HKSAR") by way of legislation through the enactment of NFNEO in July 1997. The Administration has advised that, in light of the recent amendments to the two national laws, the HKSAR Government has the constitutional responsibility to implement the amended National Flag Law and the amended National Emblem Law ("the two amended national laws") locally.

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<sup>1</sup> According to Article 18(2) of the Basic Law, the national laws listed in Annex III to the Basic Law shall be applied locally by way of promulgation or legislation by HKSAR.

## **The National Flag and National Emblem (Amendment) Bill 2021**

4. The Amendment Bill was published in the Gazette on 13 August 2021. It was introduced into the Legislative Council ("LegCo") on 18 August 2021. According to the LegCo Brief (File Ref. CMAB S/F (1) to E4/1), the principle of the legislative amendments is to reflect the provisions, principles and spirit of the two amended national laws, safeguard the proper use and preserve the dignity of the national flag and the national emblem which are the symbols and signs of the Country, so as to promote respect for the national flag and national emblem, enhance the sense of national identity among citizens and promote patriotism, whilst taking into account the common law system and the actual circumstances in Hong Kong. The key features and the main provisions of the Amendment Bill are set out in paragraphs 7 to 22 of the LegCo Brief under reference.

### **Major views and concerns expressed by the Panel**

5. On 18 February 2021, the Panel was consulted on the proposed direction and an outline of the amendments to NFNEO (see Annex 2 to LC Paper No. CB(4)495/20-21(03)). The major views and concerns expressed by members are set out in the ensuing paragraphs.

### Proposed direction of the Amendment Bill, offences and penalty level

6. While members in general expressed support for the proposed direction of the Amendment Bill, enquiry was raised as to how the Amendment Bill would suitably adopt the provisions of the two amended national laws in NFNEO. The Administration explained that certain provisions in the two amended national laws involving Mainland institutions which were not applicable to HKSAR would not be incorporated into the Amendment Bill. Members further enquired how the Administration would seek to "enhance citizen awareness of the state and promote patriotism" stipulated in Article 1 of the two amended national laws. The Administration advised that the said provision would be suitably incorporated into NFNEO and a preamble might be added for this purpose.

7. Members requested the Administration to explain what would constitute an offence under the Amendment Bill so that members of the public would not inadvertently commit an offence. They also asked whether a defence would be available to the defendant under the Amendment Bill. The Administration advised that there was no need for members of the public to worry about "inadvertently contravening the law" provided that they did not commit an insulting act in relation to the national flag and the national emblem publicly and

wilfully. Some members further asked whether the Administration would make reference to the United States Flag Code and consider prohibiting the use of the national flag as apparel, bedding, drapery, or for wrapping things, under the Amendment Bill. They also asked whether a person who used the national flag to make an outfit and wore it to show patriotism would commit an offence under the Amendment Bill.

8. The Administration advised that while it would not comment on hypothetical scenarios and circumstances as each case would be considered on their own merits, it should be noted that certain uses of the national flag (including in trademarks or advertisements; private funeral activities; or other occasions on which or places at which the display or use of the national flag or its design was restricted or prohibited under a stipulation made by the Chief Executive) were already prohibited under section 6 of NFNEO, and penalties were provided for the relevant offences. Besides, section 7 of NFNEO provided that a person who desecrated the national flag or national emblem by publicly and wilfully burning, mutilating, scrawling on, defiling or trampling on it committed an offence and was liable on conviction to a fine at level 5 and to imprisonment for three years. The Administration pointed out that while it could not give an exhaustive list of all possible insulting behaviour in relation to the national flag and the national emblem, the elements of an offence were already clearly set out in section 7 of NFNEO, i.e. whether a person had committed such an act of desecration publicly and wilfully.

9. There was a suggestion that the Administration should consider the need to increase the penalty levels under the Amendment Bill so as to achieve adequate deterrent effect. The Administration advised that the maximum penalty of offences under NFNEO was a fine at level 5 (i.e. \$50,000) and imprisonment for three years, which was on par with that under the National Anthem Ordinance ("NAO"). The Administration considered that the maximum penalty level under NFNEO was appropriate.

#### Display of the national flag and flag-raising ceremonies of schools

10. Members asked whether the requirement under the amended National Flag Law that schools had to hold a flag-raising ceremony once a week (except during vacations) would be incorporated into the Amendment Bill. Members considered that the Administration should provide clear guidance to schools on the requirements and detailed arrangements of holding flag-raising ceremonies. For example, whether students would be required to attend flag-raising ceremonies and whether flag-raising ceremonies would still be held during suspension of face-to-face classes. Some members considered that the requirements in relation to the display of the national flags in schools and the

holding of flag-raising ceremonies by schools should be applicable to private schools, international schools and tertiary institutions as well.

11. The Administration advised that as stipulated in Article 21 of the amended National Flag Law, the national flag would be taken as an important part of school education. Article 21 also stipulated that primary and secondary schools would have to educate their students on the history and connotation of the national flag, and obey the rules for the display and use of the national flag and the etiquette in a flag-raising ceremony. The Administration pointed out that schools were obliged to enable students to learn the development of the People's Republic of China in various aspects and to cultivate in them a sense of national identity. Upon passage of the Amendment Bill, the Education Bureau would update and issue relevant guidelines to schools, and related curriculum resources would be provided to schools accordingly. Similar to NAO, all primary and secondary schools, including international schools, would be required to implement the arrangements as set out in the relevant legislative amendments.

#### Publicity and educational work in respect of the national flag and the national emblem

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12. Members considered that the Administration should step up publicity and educational work to promote respect for the national flag and the national emblem, and enhance the sense of national identity among citizens. To appeal to the younger generation, members called on the Administration to explore more innovative ways in conducting the publicity and educational work. Members considered that the publicity and educational work should complement the legislative amendment exercise and dispel concern about inadvertently committing offences under the Amendment Bill.

13. The Administration agreed to suitably consider using new channels, including online channels, for relevant publicity work. The Administration advised that it would continue to step up publicity and educational work to boost the sense of national identity amongst the public.

#### **Relevant papers**

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

**Relevant documents on  
Bills Committee on National Flag and National Emblem  
(Amendment) Bill 2021**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	18.2.2021 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>

Council Business Division 4  
Legislative Council Secretariat  
26 August 2021