

立法會
Legislative Council

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**Report of the Bills Committee on National Flag and
National Emblem (Amendment) Bill 2021**

Purpose

This paper reports the deliberations of the Bills Committee on National Flag and National Emblem (Amendment) Bill 2021 ("the Bills Committee").

Background

2. On 17 October 2020, the 22nd session of the Standing Committee of the 13th National People's Congress endorsed the amendments to the Law of the People's Republic of China on the National Flag ("National Flag Law") and Law of the People's Republic of China on the National Emblem ("National Emblem Law"), which came into force on 1 January 2021. The National Flag Law and the National Emblem Law have been listed in Annex III to the Basic Law. 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 the HKSAR. The National Flag Law and the National Emblem Law were applied locally by legislation through the enactment of the National Flag and National Emblem Ordinance ("NFNEO") in July 1997. In light of the recent amendments to the two national laws, the Hong Kong Special Administrative Region ("HKSAR") has the constitutional responsibility to implement the two amended national laws locally.

The Bill

3. The Bill was published in the Gazette on 13 August 2021 and introduced into the Legislative Council ("LegCo") on 18 August 2021. According to the LegCo Brief (File Ref. CMAB S/F (1) to E4/1) issued by the Constitutional and Mainland Affairs Bureau on 11 August 2021, the

principle of the legislative amendments is to reflect the provisions, principles and spirit of the amended National Flag Law and the amended National Emblem Law, safeguard the proper use and preserve the dignity of the national flag and the national emblem which are the symbols and signs of the People's Republic of China, 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. A table comparing the provisions in the amended National Flag Law and the amended National Emblem Law with the proposed provisions in the Bill is at Annex C to the LegCo Brief under reference.

4. The main provisions of the Bill are set out in paragraph 22 of the LegCo Brief under reference. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

The Bills Committee

5. At the House Committee ("HC") meeting on 20 August 2021, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at the **Appendix**. Under the chairmanship of Hon CHEUNG Kwok-kwan, the Bills Committee has held two meetings with the Administration. The Bills Committee has also invited the public to provide written submissions on the Bill.¹

Deliberations of the Bills Committee

Use of national flag and national emblem

6. Members note that clause 5 of the Bill seeks to amend section 3 of NFNEO by empowering the Chief Executive ("CE"):

- (a) to stipulate the organizations that must use the design of the national emblem in a prominent position on the home page of their websites (proposed new section 3(2A)); and
- (b) to make stipulations in relation to the recovery and disposal of

¹ The Liberal Party has provided a written submission (LC Paper No. CB(4)1491/20-21(03)) to the Bills Committee.

national flags and national emblems (proposed new section 3(3A)).

7. The Administration has advised that following the established mechanism, the stipulations to be made by CE will be in the form of a gazette notice ("the Stipulations"). To implement the above two provisions, the Stipulations currently in force would be revised to stipulate that:

- (a) the HKSAR Government, LegCo and the Judiciary are the organizations that must use the national emblem design on the home page of their websites; and
- (b) in relation to the mechanism on the recovery and disposal of national flags and national emblems, any damaged, defiled, faded or substandard national flags and national emblems must be returned to designated collection points for central handling by the HKSAR Government.

8. Regarding the mechanism on the recovery and disposal of national flags and national emblems, the Administration has explained that to reflect the corresponding requirements in the amended National Flag Law and the amended National Emblem Law, it is the Administration's plan to require event organizers to recover the used national flags and national emblems used on the site of the event for keeping or reuse in future. Of which, any damaged, defiled, faded or substandard national flags and national emblems must be returned to designated collection points to be set up at the Community Halls or Community Centres in different Districts for central handling by the HKSAR Government. The Administration has advised that while the public is encouraged to keep the national flags and national emblems in good condition for reuse, in case people who wish to dispose of any national flags and national emblems kept by them can make use of these designated collection points, and should never discard them in a way which undermines their dignity.

National flag and national emblem not to be used inappropriately

9. Members note that clause 6 of the Bill seeks to amend section 4 of NFNEO to provide for additional circumstances in which the national flag and national emblem must not be used or disposed of inappropriately. For example, the Bill proposes that a national flag or a national emblem must not be displayed upside down, must not be displayed or used in any way

that undermines the dignity of the national flag or the national emblem, and must not be discarded at will.

10. In response to members' concerns on various scenarios that might contravene the proposed new section 4(2) under clause 6 of the Bill (e.g. unintentionally displaying the national flag upside down or sideways), the Administration has explained that the elements of the offences are provided under the proposed new section 7 as introduced in clause 10 of the Bill, i.e. to publicly and intentionally desecrate the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way, or to intentionally publish such a desecration with intent to desecrate the national flag or national emblem.

Etiquette for taking part in or attending a national flag raising ceremony

11. Members note that clause 7 of the Bill proposes to add a new section 4A to NFNEO to provide for the etiquette for taking part in or attending a national flag raising ceremony. Members have requested the Administration to widely publicize the points to note with regard to relevant provision to enhance the public's understanding of the etiquette for taking part in or attending a national flag raising ceremony. The Administration has advised that it is working on Announcements of Public Interests ("APIs") to promote the national flag, national emblem and national anthem, as well as the etiquette to be observed when the national flag is raised and when the national anthem is performed or played.

Legal consequences for non-compliance with directional provisions in the Bill

12. In response to members' enquiries on the legal consequences for non-compliance with the directional provisions in the Bill, the Administration has advised that one focus of the Bill is to make clear the requirements in respect of the use of the national flag and national emblem, including the use of the design of the national emblem on the home page of some specific websites (proposed section 3(2A)), recovery and disposal of national flags and national emblems (proposed section 3(3A)), inappropriate use of the national flag and national emblem (proposed section 4), etiquette for taking part in or attending a national flag raising ceremony (proposed section 4A), and using the national flag at mourning ceremonies (proposed Schedule 3, "use of national flag at mourning ceremonies"), etc. These provisions are all directional provisions that do not carry any penalty. According to the Administration, such arrangement

follows that of the amended National Flag Law and the amended National Emblem Law, and is consistent with the National Anthem Ordinance ("NAO"). The Administration has further advised that although the directional provisions do not carry any penalty, any person who violates the proposed section 7 of the amended NFNEO regarding the protection of the national flag and national emblem (i.e. to publicly and intentionally desecrate the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way, or to intentionally publish such a desecration with intent to desecrate the national flag or national emblem) would commit an offence, whereas the level of penalty could be up to a fine at level 5 and to imprisonment for three years.

13. The Administration has further advised that on whether a particular case (including violation of the directional provisions mentioned above, or the requirements set out in the Stipulations made by CE) would constitute a violation of the law, as before, the law enforcement agencies would need to consider holistically the actual circumstances and the gathered evidence according to the relevant stipulations in the legislation. If there is sufficient evidence to prove that the behaviour concerned was done under the circumstances of publicly and intentionally desecrating the national flag or national emblem, the law enforcement agencies would take action, and the court would determine whether the prosecution has proved all elements of the offence beyond reasonable doubt.

Manufacture of the national flag and national emblem

14. Clause 8 of the Bill seeks to amend, among others, section 5(1) of NFNEO to remove the requirement that the national flag for flying may be manufactured in HKSAR only by enterprises designated by the Central People's Government ("CPG") ("the manufacture requirement"). It is noted that the requirement under section 5(3) of NFNEO that the display or use of the national emblem in unusual dimensions is subject to CPG's prior approval is also proposed to be removed. The Legal Adviser to the Bills Committee has sought the Administration's explanation for why it is not proposed that the manufacture requirement applicable to the national emblem for hanging under section 5(1) of NFNEO be similarly removed or changed.

15. The Administration has explained that the retention of the provision relating to the national emblem for hanging in section 5(1) of NFNEO, namely "the national emblem for hanging may be manufactured in the Hong Kong Special Administrative Region only by enterprises designated

by the Central People's Government", is to reflect Article 16 of the amended National Emblem Law, which reads "the national emblem to be hung shall be uniformly made by enterprises designated by the State". In other words, the Bill proposes that there would be no designated manufacturers for national flags for flying, whereas national emblems for hanging would still have to be manufactured by enterprises designated by CPG. Such arrangement is consistent with the amended National Flag Law and the amended National Emblem Law.

16. Members note that sections 5(2) and (3) of NFNEO provide that the national flag and national emblem must be manufactured in accordance with the specifications set out in Schedules 1 and 2 to NFNEO respectively. In response to members' enquiries, the Administration has advised that it would be permissible for people to produce printed national flags on their own as long as their printed national flags comply with the relevant specifications provided in Schedule 1 to NFNEO, as well as the requirements set out in the stipulations to be made by CE. The Administration has further advised that in future, the website of the Protocol Division will also provide the relevant hyperlinks to facilitate public access to the relevant specifications.

Expanded scope of prohibition on certain uses of national flag and national emblem

17. Clause 9 of the Bill seeks to amend section 6 of NFNEO by also prohibiting the display or use of:

- (a) the national flag or its design in registered designs² or commercial advertisements; and
- (b) the national emblem or its design in registered designs, commercial advertisements or products in everyday life,

in addition to those prohibitions on the uses of the national flag and national emblem currently stated in section 6(1) and (2) of NFNEO.

18. Members have enquired whether souvenirs or face masks bearing the design of the national flag, which are made out of a patriotic motive

² The proposed new section 6(4) seeks to define "registered design" as having the meaning given by section 2(1) of the Registered Designs Ordinance (Cap. 522) which defines the term to mean a design registered by the Registrar of Designs under section 25 of Cap. 522.

and not for commercial interests, would be prohibited under the proposed section 6(1) of the Bill. Members also consider that the Administration should make it clear what are prohibited under the Bill and explain that to the public through publicity to prevent people from breaching the law inadvertently.

19. The Administration has advised that the use of souvenir items or face masks bearing the design of the national flag is not unlawful under the proposed section 6(1) of NFNEO as long as they are not displayed or used in trademarks, registered designs or commercial advertisements, private funeral activities or other occasions on which or places at which the display or use of the national flag or its design is restricted or prohibited under the stipulations made by CE, and the national flag or its design shown on them have followed the specifications³ stipulated in Schedule 1 to NFNEO. The national flag and its design must not be used in connection with any trade, calling or profession, or the logo, seal or badge of any non-governmental organization⁴ except with prior approval from the Government.

Protection of national flag and national emblem

20. Clause 10 of the Bill proposes to replace the existing offence provision in section 7 of NFNEO with a new section 7. Under the proposed new section 7(1), a person would commit an offence if the person publicly and intentionally (as opposed to "wilfully" under the existing section 7) desecrates the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way. The proposed new section 7(6) seeks to define "desecrate", in relation to the national flag or national emblem, as undermining the dignity of the national flag or national emblem as a symbol and sign of the People's Republic of China. Upon enquiry by the Legal Adviser to the Bills Committee, the Administration has explained that the word "wilfully", which is adopted in section 7 of the existing NFNEO for the Chinese word "故意", covers both "deliberate and purposeful intention" and "reckless". The Bill proposes to adopt the word "intentionally" as the English word for

³ Clauses 14 and 15 respectively amend Schedules 1 and 2 to NFNEO to elaborate further on the specifications for the size of national flags and national emblems.

⁴ According to the Stipulations made by CE currently in force, a person is prohibited from using the national flag, national emblem, regional flag or regional emblem or their designs in connection with any trade, calling or profession, or the logo, seal or badge of any non-governmental organization except with prior approval from the Government.

"故意" in the proposed new section 7 to reflect the policy intent of prohibiting all public and intentional desecrating behaviour in relation to the national flag and national emblem, and to be consistent with the approach adopted in NAO which adopted the word "intentionally" for "故意" in the provision relating to insulting the national anthem.

21. Further, under the proposed new section 7(2), a person would commit an offence if, with intent to desecrate the national flag or national emblem, the person intentionally publishes⁵ a desecration of the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way.

22. The proposed new section 7(5) seeks to extend the prosecution time bar⁶ for the proposed offences referred to in paragraphs 20 and 21 to (a) one year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police; or (b) two years after the date on which the offence is committed, whichever is the earlier.

23. Members have enquired whether behaviours of spoofing the national flag and national emblem on the Internet, such as the act of replacing the five stars on the national flag with five virus shapes, would contravene the proposed new section 7. The Administration has advised that it would depend on whether the relevant image so closely resembles the national flag as to lead to the reasonable belief that the relevant image is the national flag as pursuant to the proposed amended section 8, and whether the elements of the offences specified in section 7, i.e. publicly and intentionally desecrating the national flag, are present. The Administration has advised that it would be a question of fact and has to be assessed based on the actual circumstances of each case. The Administration has reiterated that the legislative intent is to prohibit all public and intentional desecrating behaviours in relation to the national flag and national emblem, regardless of whether the behaviour is committed in the real life or the virtual world.

⁵ The proposed new section 7(6) seeks to provide that "publish" includes (a) to communicate to the public in any form, including speaking, writing, printing, displaying notices, broadcasting, screening and playing of tapes or other recorded material; and (b) to distribute, disseminate or make available to the public.

⁶ Under section 26 of the Magistrates Ordinance (Cap. 227), in any case of an offence, other than an indictable offence, where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within six months from the time when the matter of such complaint or information respectively arose.

24. The Administration has further advised that in dealing with the abovementioned desecrating acts that are committed overseas, the Police would, under the existing legal framework (e.g. through Mutual Legal Assistance Agreements), seek co-operation and assistance from overseas law enforcement agencies as necessary.

Education in national flag and national emblem

25. Clause 11 of the Bill proposes to add a new section 7A to NFNEO to require the Secretary for Education ("SED") to give directions:

- (a) for the inclusion of the national flag and national emblem in primary education and in secondary education; and
- (b) to specified schools (i.e. schools that provide primary or secondary education, or nursery or kindergarten education) for matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony ("flag display and raising matters").

26. The proposed new section 7A also seeks to provide that for dealing with flag display and raising matters, post secondary education institutions must make reference to the directions given by SED.

27. With regard to the requirement for SED to give directions for the inclusion of the national flag and national emblem in primary and secondary education under the proposed new section 7A in clause 11 of the Bill, members have enquired about the consequences that schools would face for failures to comply with the relevant directions to be given by SED. Members have also expressed concerns on whether the Administration would strengthen the training for teachers on education in the national flag and national emblem to ensure effective teaching in this area.

28. The Administration has advised that schools have the responsibility to educate students to learn about and respect the national flag and national emblem. The Education Bureau ("EDB") would keep in view the implementation of education in the national flag and national emblem in school through daily contacts, inspections and visits. EDB has all along been stringently following up on any irregularities identified in school operation (including failing to comply with the directions given by SED), and has been demanding schools to make rectifications through the existing mechanism, e.g. giving verbal/written warnings or advisory letters. If

individual schools do not comply with the requirements, EDB can exercise power conferred by relevant provisions of the Education Ordinance (Cap. 279). The Administration has advised that schools have all along been in compliance with the Education Ordinance, relevant legislation and the guidelines issued by EDB. The Administration believes that schools will do the same in the implementation of the directions to be given by SED upon the passage of the Bill.

29. On training and support for teachers, the Administration has advised that EDB would enhance the provision of the relevant learning and teaching resources for schools. In this connection, a web-based resource platform "National Education One-stop Portal" has been newly developed with a view to facilitating teachers' and students' browsing of and access to the diversified resources relating to, among other things, the national flag and national emblem. Furthermore, from September 2021 onwards, EDB would organize web-based seminars on national flag raising ceremonies for teachers of kindergartens ("KGs"), primary and secondary schools. Throughout the 2021/22 school year, training workshops would also be conducted for teachers so as to strengthen support for schools in fostering the sense of national identity among students through regular conduct of national flag raising ceremonies.

30. Some members have questioned why SED is required to give directions for the inclusion of the national flag and national emblem only in primary and secondary education but not in KG education as well under the proposed new section 7A(1)(a) of NFNEO. They consider that children should receive education in the national flag and national emblem and develop the sense of national identity from a young age. The Administration has explained that unlike primary and secondary education, which adopts subject-based curricula, KG education aims at promoting comprehensive and balanced development in children through approaches of "Real-life Themes". Moreover, the proposed new section 7A aims to reflect Article 21 of the amended National Flag Law and Article 15 of the amended National Emblem Law. That said, the KG curriculum attaches importance to children's moral development and good living habits. Teachers should help students understand the national flag, the etiquette of raising the national flag and recognize that Hong Kong is part of the Country, so that students will develop the sense of belonging to the Country.

31. Some members consider that education in the national flag and national emblem should be covered in the national security education courses run by the universities funded by the University Grants Committee.

The Administration has advised that EDB has been in communication with universities, some of which have already incorporated national security education into their curriculum. The Administration has agreed to relay members' view to the universities for consideration.

Requiring sound broadcasting and domestic television licensees to promote the national flag and national emblem

32. Clause 11 of the Bill proposes to add a new section 7B to NFNEO to require domestic television and sound broadcasting licensees to promote in the licensed services the national flag, the national emblem and their designs by announcements or materials in the public interest.

33. Members have enquired whether news media which do not need to apply for a licence would be free from discharging this duty of promoting the national flag, the national emblem and their designs. The Administration has advised that it is now working on APIs for promoting the national flag, national emblem and national anthem, which are targeted to be broadcast after the passage of the Bill. In addition, the Administration is also devising a publicity plan to promote the national flag and national emblem in all aspects via different means and channels.

Regional Flag and Regional Emblem Ordinance ("RFREO")

34. Members have queried why the Administration does not amend RFREO and NFNEO in parallel to ensure that the enforcement standards of relevant offences would be aligned and avoid giving rise to disparities between the two Ordinances. The Administration has explained that the HKSAR has the constitutional responsibility to implement the amended National Flag Law and the amended National Emblem Law locally by amending NFNEO as soon as possible. Nevertheless, having regard to members' views, the Administration has agreed that it should review and suitably amend RFREO with a view to ensuring reasonable consistency as appropriate between its provisions with the amendments proposed by the Bill. The Administration has planned to introduce the relevant bill into LegCo within the next legislative session.

Resumption of Second Reading debate

35. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 29 September 2021.

Amendments

36. The Bills Committee and the Administration have not proposed any amendments to the Bill.

Consultation with the House Committee

37. The Bills Committee reported its deliberations to HC on 10 September 2021.

Advice sought

38. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
20 September 2021

Appendix

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

Membership list*

Chairman Hon CHEUNG Kwok-kwan, JP

Members Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Steven HO Chun-yin, BBS, JP
Hon YIU Si-wing, SBS
Hon CHAN Han-pan, BBS, JP
Hon KWOK Wai-keung, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Martin LIAO Cheung-kong, GBS, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai, JP
Hon YUNG Hoi-yan, JP
Hon LUK Chung-hung, JP
Hon LAU Kwok-fan, MH, JP
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 17 members)

Clerk Ms Joanne MAK

Legal Adviser Miss Rachel DAI

* Change in membership is set out in Annex to Appendix.

Annex to Appendix

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

Change in membership

Member	Relevant date
Dr Hon CHIANG Lai-wan, SBS, JP	Up to 31 August 2021