
National Flag and National Emblem (Amendment) Bill 2021

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A BILL

To

Amend the National Flag and National Emblem Ordinance in light of the Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the National Flag, and on Amending the Law of the People's Republic of China on the National Emblem, adopted at the 22nd Meeting of the Standing Committee of the Thirteenth National People's Congress on 17 October 2020; and to provide for incidental matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the National Flag and National Emblem (Amendment) Ordinance 2021.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

Amendments to National Flag and National Emblem Ordinance (116 of 1997)

3. Long title amended

The long title—

Repeal

“emblem”

Substitute

“emblem, and for the promotion of the national flag and national emblem,”.

4. Preamble added

Before section 1—

Add

“Preamble

WHEREAS—

- (1) the national flag and national emblem of the People’s Republic of China are a symbol and sign of the People’s Republic of China;
- (2) all individuals and organizations should respect and cherish the national flag and national emblem, and use the national flag and its design on appropriate occasions; and

- (3) this Ordinance is enacted to preserve the dignity of the national flag and national emblem, to regulate the use of the national flag and national emblem, to enhance citizen awareness of the People’s Republic of China, and to promote patriotism.”.

5. Section 3 amended (use of national flag and national emblem)

- (1) Section 3, heading, after “**emblem**”—

Add

“etc.”.

- (2) After section 3(2)—

Add

“(2A) The Chief Executive may stipulate the organizations that must use the design of the national emblem in a prominent position on the home page of their websites.”.

- (3) After section 3(3)—

Add

“(3A) The Chief Executive may make stipulations in relation to the recovery and disposal of national flags and national emblems.

(3B) The Government may provide on a website of the Government a standard version of the design of the national flag and national emblem for online use.”.

- (4) Section 3(4)—

Repeal

everything after “Schedule 3”

Substitute

“specifies—

- (a) the conditions under which the national flag is flown at half staff;
- (b) the priority of the national flag;
- (c) the raising and lowering of the national flag;
- (d) the use of the national flag at mourning ceremonies; and
- (e) the method for using the design of the national emblem in foreign affairs activities.”.

6. Section 4 amended (damaged national flag and national emblem not to be used)

(1) Section 4, heading—

Repeal

“**Damaged national flag and national emblem not to be used**”

Substitute

“**National flag and national emblem not to be used inappropriately etc.**”.

(2) Section 4—

Renumber the section as section 4(1).

(3) After section 4(1)—

Add

“(2) A national flag or a national emblem must not be displayed upside down, and must not be displayed or used in any way that undermines the dignity of the national flag or the national emblem.

- (3) A national flag or a national emblem must not be discarded at will.
- (4) A national flag or a national emblem that is damaged, defiled, faded or substandard must be recovered or disposed of in the manner stipulated by the Chief Executive.
- (5) After an event in which national flags or national emblems are used, the organizer must, in the manner stipulated by the Chief Executive, recover or dispose of the national flags or national emblems used on the site of the event.”.

7. Section 4A added

After section 4—

Add

“4A. Etiquette for taking part in or attending national flag raising ceremony

When the national flag is being raised during a national flag raising ceremony, the etiquette to be followed by the persons who take part in or attend the ceremony is—

- (a) to stand solemnly facing the national flag;
- (b) to look at the national flag with respectful attention or to salute the national flag in an appropriate manner (as the case requires); and
- (c) to not behave in a way that undermines the dignity of the national flag.

Note—

For the requirement of playing and singing the national anthem at a national flag raising ceremony, please refer to section 5 of, and item 2 of Schedule 3 to, the National Anthem Ordinance (2 of 2020).”.

8. Section 5 amended (manufacture of national flag and national emblem regulated)

(1) Section 5(1)—

Repeal

“national flag for flying and the”.

(2) Section 5(3)—

Repeal

everything after “Schedule 2.”.

(3) Section 5(5), Chinese text, before “政府”—

Add

“特區”.

9. Section 6 amended (prohibition on certain uses of national flag and national emblem)

(1) Section 6(1)—

Repeal paragraph (a)

Substitute

“(a) trademarks, registered designs or commercial advertisements;”.

(2) Section 6(2)—

Repeal paragraph (a)

Substitute

“(a) trademarks, registered designs or commercial advertisements;”.

(3) Section 6(2)(b), before “furnishings”—

Add

“products in everyday life and”.

(4) After section 6(3)—

Add

“(4) In this section—

registered design (註冊外觀設計) has the meaning given by section 2(1) of the Registered Designs Ordinance (Cap. 522).”

10. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Protection of national flag and national emblem

- (1) A person commits an offence if the person publicly and intentionally 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.
- (2) A person commits an offence if, with intent to desecrate the national flag or national emblem, the person intentionally publishes 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.
- (3) A person who commits an offence under this section is liable on conviction to a fine at level 5 and to imprisonment for 3 years.
- (4) Except as provided under subsection (2), a person does not commit an offence under this section by publishing 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.

(5) Proceedings may only be commenced for an offence under this section before whichever is the earlier of the following—

- (a) the end of the period of 1 year after the date on which the offence is discovered by, or comes to the notice of, the Commissioner of Police;
- (b) the end of the period of 2 years after the date on which the offence is committed.

(6) In this section—

desecrate (侮辱), in relation to the national flag or national emblem, means to undermine the dignity of the national flag or national emblem as a symbol and sign of the People's Republic of China;

publish (發布) 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.”.

11. Sections 7A and 7B added

After section 7—

Add

“7A. Education in national flag and national emblem

(1) The Secretary for Education must—

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- (a) give directions for the inclusion of the national flag and national emblem in primary education and in secondary education to educate the students—
- (i) on the history and spirit of the national flag and national emblem;
 - (ii) on the regulation of displaying and using the national flag; and
 - (iii) on the etiquette to be followed in a national flag raising ceremony; and
- (b) give directions to specified schools for matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony.
- (2) For dealing with matters relating to the daily display of the national flag and the weekly conduct of a national flag raising ceremony, a post secondary education institution must make reference to the directions given under subsection (1)(b).
- (3) In this section—
- post secondary education institution*** (專上院校)—
- (a) means—
 - (i) an institution specified in section 2 of the Education Ordinance (Cap. 279); or
 - (ii) a school that provides post secondary education as defined by section 3(1) of that Ordinance; but
 - (b) does not include a school that solely provides regulated courses as defined by section 2(1) of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493);

- primary education* (小學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);
- school* (學校) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);
- secondary education* (中學教育) has the meaning given by section 3(1) of the Education Ordinance (Cap. 279);
- specified school* (指明學校) means a school that provides primary education or secondary education, or nursery education or kindergarten education as defined by section 3(1) of the Education Ordinance (Cap. 279).

7B. Inclusion in sound broadcasting and domestic television programme services

- (1) This section applies if, under the terms and conditions of a broadcasting licence, the licensee may be required by a determination or direction of the Communications Authority to broadcast announcements in the public interest, or to include material in the public interest, in the licensed service.
- (2) By a determination or direction that has been made in relation to the broadcasting licence, the licensee may be required to promote the national flag, the national emblem and their designs by an announcement in the public interest, or material in the public interest, in the licensed service.
- (3) The Communications Authority must make a determination or direction in relation to the broadcasting licence, requiring the licensee to promote the national flag, the national emblem and their designs by an announcement in the public interest, or material in the public interest, in the

licensed service in accordance with any direction on broadcasting arrangements that is or may be given under subsection (4).

- (4) The Chief Executive may give directions on broadcasting arrangements for the purposes of subsection (3).
- (5) A direction under subsection (4) is not subsidiary legislation.
- (6) In this section—

broadcasting licence (廣播牌照) means—

- (a) a licence granted under section 13C(2) of the Telecommunications Ordinance (Cap. 106), or such a licence renewed under section 13E(2) of that Ordinance; or
- (b) a licence granted under sections 8(1) and 10(1) of the Broadcasting Ordinance (Cap. 562), or such a licence extended or renewed under section 11(1) of that Ordinance;

Communications Authority (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616).”.

12. Section 8 amended (copy of national flag or national emblem)

Section 8, before “belief”—

Add

“reasonable”.

13. Section 9 amended (application of regional laws)

(1) Section 9(2)—

Repeal

“national law promulgated under Annex III of the Basic Law,”

Substitute

“relevant national law,”.

(2) After section 9(2)—

Add

“(3) In this section—

National Emblem Law (《國徽法》) means the Law of the People’s Republic of China on the National Emblem adopted at the 18th Meeting of the Standing Committee of the Seventh National People’s Congress on 2 March 1991, as amended by—

- (a) the Decision of the Standing Committee of the National People’s Congress on Amending Some Laws adopted at the 10th Meeting of the Standing Committee of the Eleventh National People’s Congress on 27 August 2009; and
- (b) the Decision of the Standing Committee of the National People’s Congress on Amending the Law of the People’s Republic of China on the National Emblem adopted at the 22nd Meeting of the Standing Committee of the Thirteenth National People’s Congress on 17 October 2020;

National Flag Law (《國旗法》) means the Law of the People’s Republic of China on the National Flag adopted at the 14th Meeting of the Standing Committee of the Seventh National People’s Congress on 28 June 1990, as amended by—

- (a) the Decision of the Standing Committee of the National People’s Congress on Amending Some Laws adopted at the 10th Meeting of the Standing Committee of the Eleventh National People’s Congress on 27 August 2009; and
- (b) the Decision of the Standing Committee of the National People’s Congress on Amending the Law of the People’s Republic of China on the National Flag adopted at the 22nd Meeting of the Standing Committee of the Thirteenth National People’s Congress on 17 October 2020;

relevant national law (有關全國性法律) means the National Flag Law or the National Emblem Law.”.

14. Schedule 1 amended (specifications for the national flag of the People’s Republic of China)

Schedule 1, before the design for making the national flag—

Add

“(4) If national flags of nonstandard sizes are required in special circumstances, they are to be of a scaled-up or a scaled-down size.

(5) The size of the national flag must be proportional to the staff, and be commensurate with the purpose of use, the surrounding buildings and the surrounding environment.”.

15. Schedule 2 amended (specifications for the national emblem of the People’s Republic of China)

Schedule 2, before the squared ink line sketch of the People’s Republic of China’s national emblem—

Add

“7. If national emblems of nonstandard sizes are required in special circumstances, they are to be of a scaled-up or a scaled-down size, and be commensurate with the purpose of use, the buildings where they are hung and the surrounding environment.”.

16. Schedule 3 amended (conditions for flying the national flag at half staff, the priority of the national flag and the raising and lowering of the national flag)

(1) Schedule 3, heading—

Repeal

“**Lowering of the National Flag**”

Substitute

“**Lowering of the National Flag, etc.**”.

(2) Schedule 3, under heading “**Flying national flag at half staff**”, section 2—

Repeal

everything after “Executive”

Substitute

“that national memorial ceremonies are held or that serious natural calamities, public health emergencies or other unfortunate events have occurred and caused especially serious casualties.”.

- (3) Schedule 3, under heading “**Raising and lowering national flag**”, after section 2—

Add

- “3. If the national flag is displayed pursuant to section 3(1) or (2), the national flag must, as far as practicable, be raised in the morning and lowered in the evening.
4. Despite any other provision of this Ordinance, the display of the national flag may be dispensed with in case of inclement weather.”.

- (4) At the end of Schedule 3—

Add

“Use of national flag at mourning ceremonies

1. When holding a mourning ceremony for a specified person who has passed away, the remains, coffin or urn of the person may be covered with a national flag.
2. *Specified person* (指明人士) means, as the Central People’s Government advises the Chief Executive, a person who—
 - (a) has made outstanding contributions to the People’s Republic of China;
 - (b) is a martyr; or
 - (c) is a person stipulated by the Central People’s Government.
3. When covering the remains, coffin or urn with a national flag, the flag must not touch the ground.

4. After the ceremony concerned ends, the national flag must be recovered for safekeeping.

Method for using design of national emblem in foreign affairs activities

1. The method for the use of the design of the national emblem in foreign affairs activities is to be implemented in accordance with the provision of the Ministry of Foreign Affairs.”.
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Part 3

Amendment to Registered Designs Ordinance (Cap. 522)

17. **Section 8A added**

After section 8—

Add

“8A. Designs with national flag or national emblem are not registrable

(1) A design is not registrable if it consists of or contains the national flag, the national emblem or their designs.

(2) In this section—

national emblem (國徽) has the meaning given by section 2(1) of the National Flag and National Emblem Ordinance (116 of 1997);

national flag (國旗) has the meaning given by section 2(1) of the National Flag and National Emblem Ordinance (116 of 1997).”.

Part 4

Amendment to Registered Designs Rules (Cap. 522 sub. leg. A)

18. Section 12 amended (evidence relating to armorial bearings, etc.)

Section 12—

Repeal

“Where”

Substitute

“Subject to section 8A of the Ordinance, where”.

Explanatory Memorandum

The objects of this Bill are to amend the National Flag and National Emblem Ordinance (116 of 1997) (*Ordinance*) in light of the Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on the National Flag (*National Flag Law*), and on Amending the Law of the People's Republic of China on the National Emblem (*National Emblem Law*), adopted at the 22nd Meeting of the Standing Committee of the Thirteenth National People's Congress on 17 October 2020, and to provide for incidental matters.

2. Clause 1 sets out the short title.
3. Clause 3 updates the long title of the Ordinance in light of the amendments to the other parts of the Ordinance.
4. Clause 4 adds a preamble to the Ordinance to explain the objects of the Ordinance.
5. Clause 5 adds new subsections to section 3 of the Ordinance to deal with the use of the design of the national emblem on websites and the recovery and disposal of national flags and national emblems.
6. Clause 6 adds new subsections to section 4 of the Ordinance to provide that the national flag and national emblem must not be used or disposed of inappropriately.

7. Clause 7 adds a new section 4A to the Ordinance to provide for the etiquette to be followed during a national flag raising ceremony by the persons who take part in or attend the ceremony.
8. Clause 8 amends section 5 of the Ordinance so that national flags no longer need to be manufactured by designated enterprises and that the display or use of the national emblem in unusual dimensions is no longer subject to the prior approval.
9. Clause 9 amends section 6 of the Ordinance—
 - (a) to prohibit the display or use of the national flag or its design in registered designs or commercial advertisements; and
 - (b) to prohibit the display or use of the national emblem or its design in registered designs, commercial advertisements or products in everyday life.
10. Clause 10 replaces section 7 of the Ordinance with a new one. The new section 7 prohibits a person from publicly and intentionally desecrating the national flag or national emblem by burning, mutilating, scrawling on, defiling or trampling on it or its image or in any other way. It further prohibits a person from intentionally publishing 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, with intent to desecrate the national flag or national emblem. The new section 7(6) contains the definitions of *desecrate* and *publish* for the purposes of the prohibitions. A contravention of any of the prohibitions is an offence.

11. Clause 11 adds new sections 7A and 7B to the Ordinance. The new section 7A requires the Secretary for Education (*Secretary*)—
- (a) to give directions for the inclusion of the national flag and national emblem in primary education and in secondary education; and
 - (b) to give directions to nurseries, kindergartens, primary schools and secondary schools 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*).

The section also requires post secondary education institutions to make reference to the directions given by the Secretary for flag display and raising matters.

12. The new section 7B applies if under the terms and conditions of a sound broadcasting licence or domestic television licence, the licensee may be required by a determination or direction of the Communications Authority to broadcast announcements in the public interest, or to include material in the public interest, in the licensed service. By a determination or direction that has been made in relation to the licence, the licensee may be required to promote the national flag, the national emblem and their designs by an announcement in the public interest, or material in the public interest, in the licensed service. Moreover, the Communications Authority must make a determination or direction in relation to the licence, requiring the licensee to promote the national flag, the national emblem and their designs by an announcement in the public interest, or material in the public interest, in the licensed service in accordance with any direction on broadcasting arrangements that is or may be given by the Chief Executive.

13. Clause 12 makes a minor amendment to section 8 of the Ordinance. Clause 13 amends section 9 of the Ordinance to update the references to the National Flag Law and the National Emblem Law.
14. Clauses 14 and 15 respectively amend Schedules 1 and 2 to the Ordinance to elaborate further on the specifications for the size of national flags and national emblems.
15. Clause 16 amends Schedule 3 to the Ordinance to provide for—
 - (a) the conditions for flying the national flag at half staff;
 - (b) the raising and lowering of the national flag;
 - (c) the use of the national flag at mourning ceremonies; and
 - (d) the method for using the design of the national emblem in foreign affairs activities.
16. Clause 17 adds a new section 8A to the Registered Designs Ordinance (Cap. 522) to provide that a design is not registrable if it consists of or contains the national flag, the national emblem or their designs. Clause 18 makes a consequential amendment to section 12 of the Registered Designs Rules (Cap. 522 sub. leg. A).