

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 20 August 2021**

**Legal Service Division Report on
National Flag and National Emblem (Amendment) Bill 2021**

I. SUMMARY

- 1. The Bill** The Bill seeks to:
- (a) amend the National Flag and National Emblem Ordinance (116 of 1997) ("NFNEO") 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
 - (b) provide for incidental matters.
- 2. Public Consultation** It is not mentioned in the Legislative Council Brief issued by the Constitutional and Mainland Affairs Bureau on 11 August 2021 whether the Administration has conducted public consultation on the Bill.
- 3. Consultation with LegCo Panel** The Panel on Constitutional Affairs ("Panel") was consulted on the proposed direction and outline of the proposed amendments to NFNEO on 18 February 2021. Panel members in general supported the proposal, but some members expressed concerns on various issues.
- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns of members of the Panel, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 18 August 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Reference: CMAB S/F (1) to E4/1) issued by the Constitutional and Mainland Affairs Bureau on 11 August 2021 for further details.

Object of the Bill

2. The Bill seeks to amend the National Flag and National Emblem Ordinance (116 of 1997) ("NFNEO") 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 ("the National Flag Law"), and on Amending the Law of the People's Republic of China on the National Emblem ("the 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.

Background

3. The National Flag Law and the National Emblem Law have been listed in Annex III to the Basic Law ("BL"). According to BL 18(2), the national laws listed in Annex III to BL shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region ("HKSAR"). The National Flag Law and the National Emblem Law have been applied locally by legislation through the enactment of NFNEO since July 1997.

4. The amended National Flag Law and the amended National Emblem Law came into force on 1 January 2021. According to paragraphs 2 and 3 of the LegCo Brief, HKSAR has the constitutional responsibility to implement the two amended national laws locally and the Administration proposes to do by amending NFNEO instead of by promulgation, having regard to the common law system practised in Hong Kong, as well as the fact that the two national laws have been implemented in Hong Kong by NFNEO.

Provisions of the Bill

5. The Bill seeks to amend NFNEO to implement the relevant provisions in the amended National Flag Law and the amended National Emblem Law that are applicable to HKSAR. The salient amendments proposed by the Bill are summarized below.

Preamble

6. Clause 4 of the Bill proposes to add a preamble to explain the objects of NFNEO, namely, to preserve the dignity of the national flag and national emblem of the People's Republic of China ("PRC") being a symbol and sign of PRC, to regulate their use, to enhance citizen awareness of PRC, and to promote patriotism.

Use of national flag and national emblem

7. Clause 5 of the Bill seeks to amend section 3 of NFNEO by empowering the Chief Executive:

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

8. Clause 5 also proposes to add a new section 3(3B) to provide for a standard version of the design of the national flag and national emblem for online use to be published on a website of the Government.

National flag and national emblem not to be used inappropriately

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

10. Clause 7 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.

Manufacture of the national flag and national emblem

11. Currently, under section 5(1) of NFNEO, the national flags for flying must be manufactured in HKSAR by enterprises designated by the Central People's Government ("CPG"); and under section 5(3) of NFNEO, the display or use of the national emblem in unusual dimensions is subject to the prior approval of CPG. Clause 8 of the Bill seeks to amend section 5(1) and (3) of NFNEO to remove such requirements.

Prohibition on certain uses of national flag and national emblem

12. 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 designs¹ or commercial advertisements; and
- (b) the national emblem or its design in registered designs, commercial advertisements or products in everyday life.

Protection of national flag and national emblem

13. 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 PRC.

14. 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 publishes² 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.

15. The proposed maximum penalty for the offences referred to in paragraphs 13 and 14 above is a fine at level 5 (i.e. \$50,000) and imprisonment for three years, which is the same as that for the offence provided in the existing section 7 of NFNEO.

16. The proposed new section 7(5) seeks to extend the prosecution time bar³ for the proposed offences 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.

¹ 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.

² 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.

³ 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 shall be laid within six months from the time when the matter of such complaint or information respectively arose.

Education in national flag and national emblem

17. Clause 11 of the Bill proposes to add a new section 7A to NFNEO to require the Secretary for Education ("Secretary") 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").

18. 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 the Secretary.

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

19. Clause 11 of the Bill also 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.

Conditions for flying the national flag at half staff, etc.

20. Clause 16 of the Bill seeks to amend Schedule 3 to NFNEO to provide for flying the national flag at half staff, raising and lowering the national flag, using the national flag at mourning ceremonies, and using the design of the national emblem in foreign affairs activities.

Related amendments

21. Clause 17 of the Bill proposes to add a new section 8A to the Registered Designs Ordinance (Cap. 522) to the effect that a design would not be registrable if it consists of or contains the national flag, the national emblem or their designs, and clause 18 seeks to make a consequential amendment to section 12 of the Registered Designs Rules (Cap. 522A).

Commencement

22. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

23. It is not mentioned in the LegCo Brief whether the Administration has conducted public consultation on the Bill.

Consultation with LegCo Panel

24. As advised by the Clerk to the Panel on Constitutional Affairs ("Panel"), the Administration consulted the Panel on the proposed direction and outline of the proposed amendments to NFNEO on 18 February 2021. While Panel members in general supported the proposal, some members expressed concerns on various issues including what would constitute an offence of desecrating the national flag or national emblem and whether a defence would be available, how the Education Bureau would follow up on the compliance with the Secretary's directions in relation to the display and raising of the national flag at schools, and the publicity and educational work in respect of the national flag and the national emblem.

Conclusion

25. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns of members of the Panel, Members may consider forming a Bills Committee to study the Bill in detail.

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