

**Information Paper on the recent developments
in the review of legislation**

This paper informs Members about the formulation of a policy at the Law Drafting Division of the Department of Justice for the modernisation of our statute law and describes recent developments.

Background

2. The statute book in Hong Kong is composed of **652** Ordinances (497 public Ordinances and 155 private Ordinances) and **1238** sets of subsidiary legislation in the form of rules, regulations, orders, notices and bylaws, etc.

3. Many provisions in our statutes were modelled on statutory provisions in other common law jurisdictions, in particular English ones. Sometimes, even the entire text of an English Act of Parliament was adopted word for word and became a Hong Kong Ordinance.

4. However, many English laws contain legislative sentences that are long and complex. Laws that were drafted and enacted in an earlier time in England used language that is sometimes cumbrous and difficult to understand. The slavish adoption, without more, of these laws means that we have also imported from English law many archaic expressions and convoluted sentence structures. When we open our statute book today, we can still see an abundance of legal provisions that are difficult to comprehend.

5. The Bills of Sale Ordinance (Cap. 20) is classic example. This Ordinance was first enacted in 1886 and was originally based on the English Bills of Sale Act 1878. Section 7 of the Ordinance has a run-on sentence structure and contains 337 words in one sentence with 13 commas!

6. The wordy, unclear and impersonal nature of these statutory provisions makes our law less effective. The presumption that everyone knows the law means that justice requires the law to be made readily understandable and available. Laws that are difficult to find and that are written in sentence structures that are difficult to understand cannot be said to have fulfilled this requirement of justice.

7. This defect in our laws was brought into focus during the course of the massive project undertaken by the Law Drafting Division in the last few years to produce Chinese versions of all laws that had originally been enacted in English only. As a result of this experience, the Law Drafting Division, in October 1999, announced a policy initiative to review relevant Ordinances in our statute book to identify outdated and unclear provisions and to redraft the provisions in plain and modern language.

What has been done

8. Drafters in the Law Drafting Division recognise the need to draft simple, direct and clear laws, and to make those laws more accessible to the public. This indeed is the policy of the Division. In recent years, draft legislation produced by the Division by and large implements this policy.

9. With regard to the review programme, the following steps have been taken –

(A) In-house training on plain drafting

Firstly, to make drafters prepared for plain language drafting and to enhance their skill, plain language courses consisting of workshop sessions were organised in 1999 and 2000. At each session, one or more plain language principles were discussed and then the drafters worked through a number of exercises applying those principles. Five courses have so far been organised.

Some of the principles discussed in the courses were –

- Avoid writing long, convoluted sentences.
- Avoid intrusive phrases and clauses.
- Use verb clauses and adjectives instead of nominalisations.
- Prefer the active voice to the passive.
- Put sections, subsections and sentences in a logical, coherent order.
- Avoid elegant variation and multiple negatives.
- Use a style that focuses on the needs of the audiences of the legislation.

(B) **Restatement of some Ordinances**

In February 2000, the Legislative Council enacted the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). This was in part a redraft or restatement of the old Corrupt and Illegal Practices Ordinance (Cap. 288) which was enacted in 1955. The new, redrafted version adopted a plain language approach and was found by the legislators, administrators and the public to be more easily understandable than the 1955 version.

The Administration has recently introduced into the Legislative Council the Securities and Futures Bill. The Bill consolidates 10 existing Ordinances and aims to enshrine a user-friendly regulatory regime for the development of a fair, orderly and transparent market that is internationally competitive. Because of time constraints and other considerations, some old-style provisions can still be seen in the Bill. However, improvements to some other provisions have been made where possible. All securities related laws previously located in several different Ordinances are now consolidated into one single Ordinance and can all be found in one place.

(C) **Usability Test of "old" law and its revised version**

In November 2000, the Law Drafting Division commenced a survey among different statute users to compare the usability of the repealed Corrupt and Illegal Practices Ordinance (Cap. 288) with that of its revised version written in plain English. Six different groups of participants were invited to complete the test survey papers. They were –

Group A – staff members of the Electoral Registration Office;

Group B – prosecuting counsel from the Department of Justice;

Group C – ICAC staff (who have responsibility for the enforcement of the legislation being tested);

Group D – law students from the University of Hong Kong, all of whom are registered as electors;

Group E – translators serving at the Legislative Council Secretariat; and

Group F – assistants to Legislative Councillors.

Test papers with a questionnaire were designed to assess the following different aspects of the legislation –

Part A – Accessibility (i.e. testing how easy or difficult it is to find a provision from the legislation).

Part B – Comprehensibility (i.e. testing how easy or difficult it is for readers to understand specified provisions).

Part C – Usability (i.e. testing how easy or difficult it is for readers to use and apply particular provisions).

Part D – Readability (i.e. testing how easy or difficult it is for people to read specified provisions).

In addition, there was also a separate survey questionnaire. This is a subjective test comprising questions about the original Ordinance and the revised version. 103 questionnaires have just been completed and returned. An analysis on these survey results will be done shortly.

The survey is aimed to test the user-friendliness of plain language drafting. A survey of this nature will enable us to gauge the response of statute users to the two different versions of the law. It's aim is to ensure that we will be on the right track in the revision of other Ordinances in future.

(D) **Identifying "old" Ordinances for redraft**

We have identified 8 Ordinances for a pilot scheme under the review programme. These are Ordinances enacted in Hong Kong prior to year 1896 and to which no substantial updating or changes have been made since (See Annex). Draftsmen will be assigned to redraft these Ordinances. When drafted, the drafts will be subject to scrutiny by a Review Committee within Law Drafting Division to test their quality and user-friendliness. Such a Committee will also have the merit of building up expertise in the Division and establishing consistent style and practices.

Review of existing legislation

10. It is clear that some of the existing provisions in our statute book need to be improved and modernised. So far, we have not set a timetable to

proceed with the revision work. Neither do we see the need for a timetable at this very beginning stage since we see the work on the whole as a gradual and continuous one.

11. As mentioned earlier, some work has already been done and some work is in progress. Nowadays, in the course of drafting new amendment legislation, opportunities are taken where possible to remove minor errors and omissions and to update some of the obviously dated terms and expressions. The review is therefore already an on-going pursuit.

12. The work of reviewing outdated and unclear legislation is nevertheless not simply a task of finding a willing legislative drafter, giving him or her a list of areas to revise and redraft and closing the door on him or her for as long as it takes. Even the simplest revision task very often requires a policy decision on the area to be revised. In addition, most revision projects may require a review of a group of Ordinances to ascertain whether there are any spent or inoperable provisions to be repealed or revised and whether there are any policy developments that need to be taken account of before revision. In other words, a systematic revision programme must be preceded by an analysis of what projects should be undertaken and which one should take priority. The work necessitates close involvement with administrators.

13. We are only at the very beginning stage of this meaningful but mammoth programme. The goal is now set and we need to steer on carefully. The work needs to be preceded by a proper training of the draftsmen and usability and quality tests of the revised versions of the law. From there we will start our discussion with the relevant Bureaux to gradually work out a programme, and possibly a timetable.

Law Drafting Division
Department of Justice
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Annex

Cap. No.	Short Title	Year of Enactment
8	Evidence Ordinance	1889
18	Apportionment Ordinance	1886
19	Bills of Exchange Ordinance	1885
20	Bills of Sale Ordinance	1886
21	Defamation Ordinance	1887
27	Sale of Land by Auction Ordinance	1886
48	Factors Ordinance	1896
212	Offences against the Person Ordinance	1865