

**立法會**  
***Legislative Council***

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**Panel on Administration of Justice and Legal Services**

**Information note prepared by the Legislative Council Secretariat  
for the meeting on 20 December 2011**

**Role and work of the Law Reform Commission**

At its meeting on 19 April 2011, the Panel on Administration of Justice and Legal Services noted the information paper provided by the Law Reform Commission ("LRC") on its role and work including the state of implementation of the Commission's recommendations made in its reports published during the last 15 years [issued LC Paper No. CB(2)1479/10-11(01) on 8 April 2011]. Members expressed concern that many of these recommendations had not yet been followed up and agreed that the Panel should hold a discussion with the Secretary for Justice, the Chairman of LRC, on his role in the law reform of Hong Kong and the work of the Commission.

2. Implementation of the LRC's recommendations has been an on-going concern to Members. During the examination of the Draft Estimates of Expenditure 2002-2003, Hon Audrey EU had enquired about the number of recommendations which had been implemented and if there was any plan to increase the manpower of the Commission to enhance its research work on law reform. The Department of Justice's reply is in **Appendix I**.

3. Hon Paul TSE raised a written question on "Implementation of recommendations on law reform" at the Council meeting of 26 January 2011. The Chief Secretary for Administration's reply is in **Appendix II**.

Examination of Estimates of Expenditure 2002-03  
**CONTROLLING OFFICER'S REPLY TO  
 WRITTEN QUESTION**

Reply Serial No.

SJ021

Question Serial No.

0618

Head: 92 Department of Justice Subhead(No. & title):

Programme: (3) Legal Policy

Controlling Officer: Director of Administration and Development

Question :

On the work of the Law Reform Commission, can the Government provide details on-

- (1) Since 1997, how many recommendations put forward by the Law Reform Commission have been accepted (with legislation being drafted or to be drafted) by the Government and how many of them have been implemented (with relevant legislation enacted)? What is the ratio between them?
- (2) Is there any plan to increase the manpower of the Law Reform Commission to enhance its research work on law reform? If yes, what are the details? If no, what are the reasons?

Asked by: Hon. EU Yuet-mee, Audrey

Reply:

(1) The Law Reform Commission has published eight reports since 1 July 1997. Their titles and dates of publication, together with details of any implementing legislation or other relevant activities, are shown below -

- (a) Description of flats on sale: Overseas uncompleted residential property (September 1997)
- (b) Civil liability for unsafe products (February 1998): Economic Services Bureau is reviewing a working draft of a Bill.
- (c) Insolvency: Winding-up provisions of the Companies Ordinance (July 1999): Companies (Amendment) Bill was introduced to LegCo in January 2002 to implement a number of straightforward technical amendments. The major recommendations are still under consideration by the Financial Services Bureau.
- (d) Age of criminal responsibility in Hong Kong (May 2000): Juvenile Offenders (Amendment) Bill was introduced to LegCo in November 2001.
- (e) Procedure governing admissibility of confession statements in criminal proceedings (July 2000): this report did not recommend any changes requiring legislation.
- (f) Privacy: Stalking (October 2000)
- (g) Guardianship of children (January 2002)
- (h) Contracts for the supply of goods (February 2002)

None of the seven reports recommending legislative change has so far been implemented by enacted legislation.

(2) Members of the Commission are appointed from the community. They serve part-time, and volunteer their expertise unpaid to the work of the Commission and its sub-committees. There is a limit to the amount of work which those members can reasonably be expected to undertake. The existing manpower of the Commission's Secretariat is appropriate to the Commission's needs.

Signature	_____
Name in block letters	Kevin C M Ho
	Director of Administration and Development
Post Title	_____
Date	21 March 2002

~~moment, the two companies did not pursue further the proposal to interconnect the two networks.~~

As for the proposal of installing ATMs in government facilities that are more frequently used by the public, ATMs are currently installed in/around the malls and markets managed by the Hong Kong Housing Authority (HA). The HA will continue to stay connected with banks and identify suitable sites for the installation of more ATMs in response to the business needs of banks, with a view to offering more appropriate and convenient banking services.

The HKMA has also studied with the industry the feasibility of installing ATMs in post offices. However, having regard to the overlap of the distribution network of post offices and bank branches, it is considered that the provision of banking services through post offices might not be an effective option.

In fact, currently over 50 ATMs are installed by some banks in some of the convenience stores and chain fast food restaurants. Since those merchants operate round-the-clock, this could provide greater convenience to the public than installing ATMs in post offices or markets.

The HKMA will continue to encourage the industry to study the feasibility of different proposals that would improve ATM services.

- (d) At present, China UnionPay cardholders from the Mainland can already use their China UnionPay cards to withdraw cash and do retail purchases in Hong Kong.

### **Implementation of Recommendations on Law Reform**

11. **MR PAUL TSE** (in Chinese): *President, it has been reported that the Law Reform Commission (LRC) has completed 27 reports since 1997, but the Government has not yet implemented the law reform recommendations contained in 22 of these reports. In this connection, will the Government inform this Council:*

- (a) *of the details of the Government's follow-up actions on the Commission's various law reform recommendations since 1997, and the reasons why some of the recommendations have not yet been followed up;*
- (b) *whether it has assessed the specific impact of the Government not following up, in a timely manner, most of the Commission's recommendations on amending legislation; if it has, of the results of the assessment; if not, whether it can immediately conduct such an assessment and make improvements accordingly; and*
- (c) *whether it will make reference to the statutory procedures of other countries, and require the Government to handle the law reform recommendations of the Commission or other relevant statutory bodies within a statutory period, so as to ensure that Hong Kong's legislation can keep abreast of time?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Chinese): President, the recommendations put forward by the LRC are the result of detailed studies by the LRC. The Administration attaches great importance to these recommendations and agrees in principle that timely actions should be taken to follow up on the recommendations of the LRC. However, it should be noted that the complexity and scope of the subject matter of LRC reports vary greatly and some reports require longer periods of time than others for bureaux to consider.

Bureaux concerned have been considering the recommendations set out in LRC reports carefully. Some of these recommendations have already been implemented. Bureaux will also inform the public on their response to those recommendations which require further consideration or remain unimplemented. Details of the follow-up actions taken by relevant bureaux on the LRC reports published since 1997 are set out at Annex.

The Administration is aware that in some jurisdictions, statutory or administrative guidelines are in place for consideration of reports of their law reform agencies. While such guidelines encourage early consideration of law reform proposals, we consider it important that any such guidelines should allow the Administration sufficient time for proper consideration of law reform

proposals, especially those involving complex or controversial matters. To improve the existing mechanism, for all new LRC reports published in future, relevant bureaux would provide a detailed public response (setting out which recommendations they accept, reject or intend to implement in modified form) to the Secretary for Justice (as the Chairman of the LRC) as soon as practicable. In any event, an interim response setting out the timetable for completion of the detailed response and the steps taken will be provided within six months following the publication of the LRC reports.

Annex

#### Follow-up actions taken by relevant bureaux on LRC reports

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
1	Extrinsic materials as an aid to statutory interpretation (March 1997)	The Interpretation and General Clauses (Amendment) Bill 1999 was introduced into the Legislative Council in March 1999. The Bill had not been enacted, taking into account the views of the relevant Bills Committee.
2	The year and a day rule in homicide (June 1997)	The Statute Law (Miscellaneous Provisions) Ordinance was enacted in June 2000 to implement the LRC's recommendations.
3	Description of flats on sale — Part 2: Overseas uncompleted residential property (September 1997)	In view of the LRC's recommendations on regulating the sale of overseas residential properties by licensed estate agents in Hong Kong, the Estate Agents Authority (EAA) commissioned a study to take stock of the laws and practices relating to sale of non-local residential properties in other jurisdictions. The study concluded that: <ul style="list-style-type: none"> <li>(a) the proposed regulatory scheme would not be effective as it would apply to estate agents only but not to the overseas developers; and</li> <li>(b) the legal frameworks of other jurisdictions might be different from that of Hong</li> </ul>

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		<p>Kong, and the laws of other jurisdictions might not require similar protection to property buyers.</p> <p>Also, with the public education efforts of the EAA and the Consumer Council, consumers had become more aware of the higher risk of purchasing uncompleted residential properties outside Hong Kong and had become more cautious in considering buying such properties. The number of complaints about the sale of overseas uncompleted residential properties had diminished. The need for legislation was considered to be less imminent.</p> <p>To date, as far as estate agency practices and flat sales are concerned, the sale of local residential properties is the area of primary concern to the public. The Transport and Housing Bureau will continue to accord priority to this area of work. The Transport and Housing Bureau does not have a definite timetable to extend the provisions of the Estate Agents Ordinance to cover non-local residential properties, and will continue to keep in view the issue.</p>
4	Civil liability for unsafe products (February 1998)	<p>The LRC recommends in this report that a "strict liability" regime should be established to give an additional basis for aggrieved parties to seek compensation for injuries and damages arising from unsafe products. This proposal involves very complex and controversial issues. The then Trade and Industry Panel of the Legislative Council was consulted in 1999. There has been strong objection to the proposal from the Legislative Council Members representing the trade sector. Some members considered it unfair to hold a party such as an importer liable if that party did not have full control over the</p>

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		<p>safety of the product he supplied, while others were concerned about the likely increase in litigation and compliance costs.</p> <p>As the community is unlikely to reach any consensus on this matter in the near future, the Commerce and Economic Development Bureau does not intend to take forward LRC's proposal at this juncture.</p>
5	Insolvency — Part 3: Winding-up provisions of the Companies Ordinance (July 1999)	<p>Some technical amendments were implemented by the Companies (Amendment) Ordinance 2003.</p> <p>While the Financial Services and the Treasury Bureau will not pursue the recommendation to merge corporate insolvency legislation with personal bankruptcy legislation on grounds that there is no clear benefit or market demand, other policy and technical issues will be revisited in the context of the Phase II Companies Ordinance Rewrite exercise.</p>
6	The age of criminal responsibility in Hong Kong (May 2000)	The Juvenile Offenders (Amendment) Ordinance was enacted in March 2003 to implement LRC's recommendations.
7	The procedure governing the admissibility of confession statements in criminal proceedings (July 2000)	The LRC recommended no change to the existing laws.
8	Privacy — Part 3: Stalking (October 2000)	<p>The LRC reports on privacy are highly controversial. When deciding the way forward, the Constitutional and Mainland Affairs Bureau needs to reach consensus in the community and strike a balance between different rights such as rights to personal privacy and freedom of the press.</p> <p>Among the LRC reports on privacy, the report on "stalking" is comparatively less controversial and the Constitutional and Mainland Affairs</p>



	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		Bureau will first deal with this report. The Constitutional and Mainland Affairs Bureau is examining the report to consider carefully those proposals which may impact on press freedom. As an important step to follow-up on the LRC report, the Constitutional and Mainland Affairs Bureau will make practical preparation for conducting public consultation in the coming few months. The Constitutional and Mainland Affairs Bureau plans to launch a consultation exercise in mid-2011.
9	Guardianship and custody — Part 1: Guardianship of children (January 2002)	<p>The Report on Guardianship of Children made reform recommendations in relation to the law (mainly the Guardianship of Minors Ordinance) which governs the appointment of guardians for children in the event of the death of one or both parents.</p> <p>The Labour and Welfare Bureau completed the examination of the Report on Guardianship of Children and issued its response to the report to the Chairman of the LRC in October 2009. In brief, the Labour and Welfare Bureau has accepted in principle all the recommendations of the report and is prepared to take them forward. The Legislative Council Panel on Welfare Services was briefed on the Administration's position in February 2010. A bill to implement the recommendations will be introduced into the Legislative Council in the 2010-2011 legislative session.</p>
10	Contracts for the supply of goods (February 2002)	The Commerce and Economic Development Bureau agrees that the implied undertakings for all types of contracts for the supply of goods should be standardized. It accepts the LRC's recommendation that legislative amendments should be introduced to extend to contracts for the supply of goods the implied undertakings



	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		<p>which currently apply in respect of contracts for the sale of goods.</p> <p>The Commerce and Economic Development Bureau's current priority in the area of consumer protection is to enhance legislative control over unfair trade practices and improve the operation of the Pyramid Selling Prohibition Ordinance. The Commerce and Economic Development Bureau will work on this subject in due course.</p>
11	Guardianship and custody — Part 2: International parental child abduction (April 2002)	<p>The Report on International Parental Child Abduction recommends legislative amendments to prevent, and provide remedy for, international parental child abduction.</p> <p>The Labour and Welfare Bureau completed the examination of the Report on International Parental Child Abduction and issued its response to the report to the Chairman of the LRC in October 2009. In brief, the Labour and Welfare Bureau has accepted in principle all the recommendations of the report, and is prepared to take them forward. The Legislative Council Panel on Welfare Services was briefed on the Administration's position in February 2010. The Labour and Welfare Bureau is currently working on the detailed amendment proposals in consultation with relevant bureaux/departments.</p>
12	The regulation of debt collection practices (July 2002)	The Security Bureau made a detailed public response to LRC in September 2005, indicating that various legislative provisions are already in place to combat specifically illegal debt collection practices. The Constitutional and Mainland Affairs Bureau will examine the stalking practices relating to debt collection activities when following up on the recommendations of LRC Report on Stalking.
13	Description of flats on sale — Part 3: Local completed residential	The Administration has been keeping in view the need to regulate the sale of first-hand

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
	properties (September 2002)	completed residential properties and has introduced various measures over the years. To further strengthen the regulation of the sale of first-hand private residential properties, the Transport and Housing Bureau has established the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues pertaining to the regulation of the sale of first-hand properties by legislation, including uncompleted and completed first-hand residential properties regardless of the lease conditions. The Steering Committee has commenced work in November 2010 for completion in October 2011, and will come up with practicable recommendations to the Secretary for Transport and Housing for consideration. The Transport and Housing Bureau's target is to take forward the subsequent public consultation in the form of a White Bill in order to expedite the consultation process.
14	Guardianship and custody — Part 3: The family dispute resolution process (March 2003)	Having consulted relevant bureaux and departments, the Home Affairs Bureau indicated support to the recommendations in the LRC's report. Many of the recommendations in the report have been implemented. Other recommendations are being considered and will be followed up by relevant bureaux and departments.
15	Privacy — Part 4: Privacy and media intrusion (December 2004)	See item 8 above.
16	Privacy — Part 5: Civil liability for invasion of privacy (December 2004)	See item 8 above.
17	Guardianship and custody — Part 4: Child custody and access (March 2005)	The Report on Child Custody and Access made a total of 72 recommendations on the arrangements in relation to child custody and access, including that Hong Kong should follow

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		<p>jurisdictions such as England and Wales and Australia in applying the "joint parental responsibility" model to the Family Law.</p> <p>Some of the recommendations of the report on Custody and Access will fundamentally change the concept of "custody" underpinning the existing Family Law and have far-reaching implications. The Legislative Council Panel on Welfare Services was briefed on the progress in February 2010 where the Labour and Welfare Bureau flagged up the need to take a cautious approach on the matter and carefully consider the diverse views of relevant stakeholders before deciding on whether, and if so, how to adopt the recommendations of the report.</p>
18	Rules for determining domicile (April 2005)	The Domicile Ordinance was enacted in February 2008 to implement LRC's recommendations.
19	Privity of contract (October 2005)	The Department of Justice (DoJ) agrees with the LRC that the doctrine of privity of contract should be reformed by means of a comprehensive, systematic and coherent legislative scheme. The DoJ intends to prepare a bill to implement this proposal and will consult relevant stakeholders on the draft legislation in due course.
20	Privacy — Part 6: The regulation of covert surveillance (March 2006)	<p>The Interception of Communications and Surveillance Ordinance was enacted in August 2006 to implement the regulatory regime for interception and covert surveillance undertaken by public officers.</p> <p>As regards the recommendations on the regulatory regime for covert surveillance undertaken by non-public officers, see item 8 above.</p>

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
21	Substitute decision-making and advance directives in relation to medical treatment (August 2006)	<p>The Food and Health Bureau shares LRC's view that it would be premature to embark on any legislative process for advance directives, and will take follow-up actions in consultation with the Hospital Authority, the medical profession, relevant NGOs and other stakeholders to raise the public's awareness of advance directives.</p> <p>The Food and Health Bureau will also examine the definition of "mentally incapacitated person (MIPs)" in the overall context of the law and explore the scope for improving its clarity and consistency in its application to various parts of the law. The Food and Health Bureau will consult the relevant parties including mental health experts and seek to pursue any necessary legislative changes under a composite proposal in the long term.</p>
22	Conditional fees (July 2007)	<p>On the proposed establishment of conditional fees, the DoJ has reported the Administration's response to the Legislative Council's Administration of Justice and Legal Services (AJLS) Panel on 28 June 2010. In brief, as a privately-run Conditional Legal Aid Fund (CLAF) could only operate with the support of the legal profession, there appeared to be no prospect of establishing a CLAF in Hong Kong for the time being. In the circumstances, the Administration did not propose to take the recommendation of the Report that a CLAF be established any further.</p> <p>On the proposed expansion of the Supplementary Legal Aid Scheme (SLAS), the Administration would earmark \$100 million for injection into the SLAS fund when necessary to expand the scheme to cover more types of cases. Separately, the Home Affairs Bureau has reported progress to the AJLS Panel in September and November 2010 respectively. Members noted that the Administration had</p>

	<i>LRC Report (Date of publication)</i>	<i>Follow-up actions taken/ Evaluation of relevant bureau</i>
		received the recommendations from the Legal Aid Services Council on the proposed expansion of the scope of SLAS in December 2010, and would continue to listen to Members' views in the coming Panel meeting in January 2011. The Home Affairs Bureau plans to consult the AJLS Panel on the Administration's specific recommendations on the proposed expansion of SLAS in March 2011.
23	Enduring powers of attorney (March 2008)	The DoJ will put forward a bill to implement the recommendations.
24	Hearsay in criminal proceedings (November 2009)	The DoJ is studying the complex issues raised in the LRC report and is seeking the view of the Law Society and the Bar Association.
25	Sexual offences records checks for child-related work: interim proposals (February 2010)	The Security Bureau made a response to the LRC in November 2010 indicating that it would implement the LRC's proposed administrative scheme to reduce the risk of children and mentally incapacitated persons from being sexually abused. The police will establish an administrative scheme of sexual conviction record check in 2011 to allow employers who are going to hire persons undertaking child-related work to check such information.
26	Criteria for service as jurors (June 2010)	The DoJ will put forward a legislative proposal to implement the recommendations.
27	The common law presumption that a boy under 14 is incapable of sexual intercourse (December 2010)	The Security Bureau is examining the report together with the DoJ with a view to amending the relevant legislation to implement the LRC's recommendation to abolish the common law presumption.

## ~~Regulation of Charitable Institutions~~

12. ~~MR ABRAHAM SHEK: President, according to section 88 of the Inland Revenue Ordinance (the Ordinance) (Cap. 112), "there shall be exempt and there shall be deemed always to have been exempt from tax any charitable institution~~