

**立法會**  
**Legislative Council**

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

**Meeting on 20 July 2015**

**Updated background brief on the implementation of the recommendations  
made by the Law Reform Commission**

**Purpose**

This paper provides background information on the role and work of the Law Reform Commission ("LRC"), and summarizes the major views and concerns expressed by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the implementation of the recommendations made by LRC in previous discussions.

**Background**

Role and work of LRC

2. LRC was formally established pursuant to a decision of the Executive Council made in 1980 as an independent body which would consider areas of the law that may merit consideration for reform. The Secretary for Justice ("SJ") chairs LRC, whilst the Chief Justice ("CJ") and the Law Draftsman of the Department of Justice ("DoJ") are *ex officio* members. Other members of LRC are appointed by the Chief Executive, on the advice of SJ. They are not confined to members of the legal profession, but include non-lawyers, academics, professionals of different disciplines and prominent members of the community.

3. LRC considers for reform such aspects of the law as may be referred to it by SJ, CJ or jointly by SJ and CJ. Since July 2012 when the incumbent SJ took office, the practice is to have the potential topics discussed by members of LRC before a decision is made as to whether such topics shall be made subject of study. In the event any topic is considered to be worthy of such study, a subcommittee

will normally be formed to examine the topic in details. To gauge the views of relevant stakeholders and the public on the preliminary findings and recommendations made by LRC, extensive public consultations will be conducted by way of publication of a consultation paper, before LRC reaches its conclusion. Relevant Panels of the Legislative Council ("LegCo") may also be briefed on the LRC proposals during the public consultation period. A final LRC report containing all LRC recommendations on the subject will be published and passed to the Administration for consideration.

4. LRC has published a total of 64 reports since 1982. A list of 63 reports published is appended to LRC paper for the Panel's meeting on 27 May 2014 (LC Paper No. CB(4)692/13-14(03)). LRC's reports are categorized into groups<sup>1</sup> according to their implementation status. One additional LRC Report on "Adverse possession" was issued in October 2014.

5. At present, there are six ongoing projects under study by LRC<sup>2</sup> –

- (a) Review of sexual offences;
- (b) Causing or allowing the death of a child;
- (c) Archives law;
- (d) Access to information; and
- (e) Third party funding for arbitration; and
- (f) Periodical payments for future pecuniary loss in personal injury cases.

According to the Administration's estimation, by mid-2015, two new topics will be referred to the LRC for study, one on tort law and one relating to criminal law.

#### Mechanism to monitor the implementation of LRC recommendations

6. Arising from the public concern about the delays in implementing LRC

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<sup>1</sup> LRC's reports are categorized into the following groups according to their implementation status, namely (a) proposals implemented fully; (b) proposals implemented partially; (c) proposals being considered or implemented; (d) proposals rejected by the Administration; and (e) the Administration has no intention to implement the proposals at this juncture.

<sup>2</sup> Reply Serial No. SJ045 to the Controlling Officer's reply to initial written question for the Examination of Estimates of Expenditure 2015-2016.

proposals, the Director of Administration issued a set of guidelines in October 2011 under which bureaux/departments ("B/Ds") having policy responsibility over any LRC report are required to provide at least an interim response within six months of publication of the report and a detailed public response within 12 months of its publication. The interim report should set out a clear timetable for completion of the detailed response and the steps taken so far. B/Ds are required to give full consideration to LRC recommendations and provide a detailed public response setting out which recommendations they accept, reject or intend to implement in modified form.

7. At the Panel meeting to discuss the "Role and work of the LRC" on 20 December 2011, the Panel was concerned that with long delay in implementation, the validity and relevance of LRC recommendations are likely to be diminished and the efforts wasted. To ensure that LRC recommendations would be implemented without undue delay, the Panel proposed for the endorsement of the House Committee ("HC") the following mechanism for monitoring the Government's progress in implementing the LRC recommendations –

- (a) SJ to submit to the Panel for discussion an annual report flagging up the progress in respect of the LRC reports which have not yet been implemented, say, after the Policy Address in each year;
- (b) the Panel to copy the annual report to the relevant Panel to facilitate their follow-up with the B/Ds having policy responsibility over the respective LRC reports; and
- (c) the relevant Panels to include the Administration's responses to the respective LRC reports in their list of outstanding items for discussion, and to invite members of the Panel and all other Members to join the future discussion.

The mechanism was endorsed by HC at its meeting on 2 March 2012. Pursuant to the above mechanism, SJ submitted the first annual report to the Panel for its consideration at the meeting on 25 June 2013. The second annual report was discussed at the Panel meeting on 27 May 2014.

### **Discussions of the Panel**

8. The Panel discussed issues relating to the implementation of the recommendations made by LRC at its meetings on 25 June 2013 and 27 May 2014. Major views and concerns expressed by Panel members and the Administration's responses are summarized below.

### Progress of implementation of LRC recommendations

9. Members expressed concern that the Administration had spent a long time in considering LRC recommendations on various reports and that the recommendations would become out of date due to the lapse of time. Members were worried that the delay in implementing those recommendations would hinder the local legislation system from keeping up with the global trend as well as the system's overall development.

10. The Administration advised that the Administration had followed up concerns on the need to expedite the implementation process and LRC also attached great importance to monitoring the progress on implementation of its recommendations. Since 2013, the progress on implementation was a standing item for discussion at each LRC meeting and relevant information was regularly uploaded onto LRC's website for public viewing. However, in the light of the policy and practical implications of the issues involved, the Administration encountered various difficulties in implementing some of the recommendations. For example, in the case of LRC Report on "Insolvency – Part 2: Corporate rescue and insolvent trading" published in 1996, the Administration advised that different sectors of the community had divergent views on the scope of the Companies Bill, thus making it difficult to use the Bill to take forward LRC recommendations concerned.

### Resources and the work of LRC

11. Noting that members of LRC worked on a volunteer basis, some members opined that the inadequacy in manpower resources in LRC might prolong the consultation process and the study of legislative proposals. In this regard, members suggested the Administration to consider seeking funding to employ more full-time staff to support the work of LRC. The Administration advised that discussions had been held with various parties on the resources and the efficiency of LRC with a view to formulating measures to expedite LRC's work. One of such measures was to invite representatives from relevant B/Ds to join LRC's subcommittees on law reform proposals so that any policy issues in relation to the implementation of the proposals could be discussed at an early stage.

12. Some members considered it a duplication of efforts for LRC and B/Ds to conduct separate public consultation exercises on the same subject matter and recommended that studies by LRC on areas which were considered controversial in nature in the light of overseas experience should be avoided in order not to waste resources or create unrealistic expectation.

13. As all topics of study by LRC were now initiated by the Administration, some members were concerned that the general public might have doubts about the independence and impartiality of LRC, and that the topics of study might be subject to the Government's interference.

14. The Administration responded that when selecting topics for LRC's study, consideration would also be given to whether there were relevant studies by other organizations or whether it would be done more effectively by the bureaux. In addition to the formal referral mechanism, proposals for law reforms could also be generated by the LegCo, the academic sector and the public. Furthermore, since proposals made by LRC might involve policy consideration and might draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature.

#### Implementation status of specific LRC projects

*LRC Report on "Guardianship and custody – Part 4: Child custody and access" published in March 2005*

15. At the Panel meeting on 22 April 2014 to discuss the consultation paper put forward by CJ's Working Party on Family Procedure Rules, some members took the opportunity to express their disappointment that the LRC Report on "Guardianship and custody – Part 4: Child custody and access" published in March 2005 had not been taken forward by the Administration. Members opined that, in tandem with the proposed reforms on the procedural rules in family justice system, the Administration should also consider the recommendations put forward in LRC Report and propose changes to the substantive law in relation to child custody and access. A motion was passed to urge the Administration to immediately follow up on the recommendations made by LRC in its 2005 Report on Custody and Access.

16. The Administration responded that the Labour and Welfare Bureau ("LWB") was actively considering the recommendations made by LRC in relation to child custody and access. As some of the recommendations involved policy considerations, the Administration needed to consider the proposals carefully. Nevertheless, LWB had launched a public consultation in January 2012 on this topic to draw views from different stakeholders, including the Panel on Welfare Services which was briefed on the results of the consultation exercise and the Administration's plan to prepare legislative proposals and implementation arrangements in July 2013. LWB was currently working out the legislative proposals in conjunction with DoJ, and also considering the implementation arrangements having regard to the experience of other

jurisdictions as well as local circumstances. It was also liaising with the Judiciary and other relevant B/Ds to consider how to take forward some of the recommendations through administrative means, e.g. issue of guidelines and provision of training.

*LRC Report on "The regulation of debt collection practices" published in July 2002*

17. Noting that the use of 'positive credit data' proposed by LRC Report on debt collection practices was implemented through the Code of Practice on Consumer Credit Data 2002, a member enquired about the rationale for rejecting other recommendations on controlling debt collection practices, such as stalking, which were highly concerned by the public.

18. The Administration explained that there were some operational difficulties in implementing the other recommendations on controlling debt collection practices. Having considered that the number of complaints relating to debt collection practices had dropped and there were already other legislative provisions in place to combat abusive practices employed by debt collection agencies, the Administration rejected other recommendations of the report.

*Report on "Class actions" published in May 2012*

19. Members noted that there was a grave concern in the business sector on the recommendations relating to class actions. A member enquired whether the Administration would conduct any public consultation on the subject. The Administration advised that there were divergent views among different sectors of the community about whether class action procedures should be implemented and whether the scope should cover only consumers or more parties. The local business sector was very concerned about potential abuse of the class action procedures with reference to the abuse cases in the insurance and pharmaceutical industries in the United States. To work out a balanced point of views, a cross-sector Working Group had been established under DoJ to study the proposals of the report. The Working Group had consulted relevant stakeholders, including trade organizations, and it would continue to gauge views from different parties on the subject. The Administration would decide the way forward in the light of the recommendations to be made by the Working Group.

Progress of ongoing projects under study by LRC

20. Some members enquired about the work progress on law reform topics of archives law and access to information. Noting that LRC had established two subcommittees to consider the topics of archives law and access to information,

some members opined that the two topics should be studied together given their inter-relatedness.

21. The Administration advised that on the law reform topics of archives law and access to information, taken into account the practice of other common law jurisdictions and detailed deliberations among LRC members, LRC had decided to conduct the relevant studies by two separate subcommittees. Nevertheless, the Administration had conveyed the message to the chairmen of the two subcommittees that they might combine the two subcommittees into one if they considered it necessary to do so in the future.

### **Council question**

22. Hon Paul TSE raised a written question on "Implementation of recommendations on law reform" at the Council meeting of 26 January 2011. Hyperlink to the relevant Hansard is provided in **Appendix**.

### **Recent development**

23. LRC will provide its third annual report to the Panel to set out the latest progress at the meeting on 20 July 2015.

### **Relevant papers**

24. A list of relevant papers is in **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
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**Implementation of the recommendations made by  
the Law Reform Commission**

**List of relevant papers**

Meeting	Date	Paper
Council meeting	26 January 2011	<a href="#">Official Record of Proceedings Pages 81-91 (Written question raised by Hon Paul Tse)</a>
Panel on Administration of Justice and Legal Services	19 April 2011	<a href="#">Information note provided by LRC</a>
	20 December 2011 (Agenda item III)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>
	27 February 2012 (Agenda item III)	<a href="#">Agenda</a> <a href="#">Draft letter to the Chairman of House Committee</a> <a href="#">Minutes of meeting</a>
House Committee	2 March 2012 (Agenda item VII)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>
Panel on Administration of Justice and Legal Services	25 June 2013 (Agenda item III)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>
	27 May 2014 (Agenda item III)	<a href="#">Administration's paper</a> <a href="#">Administration's response to the motion passed at the meeting on 22 April 2014</a> <a href="#">Minutes of meeting</a>