

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1255/16-17(06)

Ref : CB4/PL/AJLS

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

**Meeting on 26 June 2017**

**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 LRC's recommendations by bureaux/departments ("B/Ds") at previous meetings of the Panel.

**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 LRC members 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. A total of 65 reports have been published by LRC since 1982. With one report recommending no change to the law<sup>1</sup>, the remaining 64 reports are tabulated into the following categories according to their implementation status:

- (a) proposals implemented in full (34 reports, 53.1% of the 64 reports);
- (b) proposals implemented in part (8 reports, 12.5% of the 64 reports);
- (c) proposals under consideration or in the process of being implemented (17 reports, 26.6% of the 64 reports);
- (d) proposals rejected outright by the Government (3 reports, 4.7% of the 64 reports); and
- (e) the Government has no plan to implement the proposals at this juncture (2 reports, 3.1% of the 64 reports).

5. At present, there are five ongoing projects under study by LRC:

- (a) Review of sexual offences;
- (b) Causing or allowing the death of a child;

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<sup>1</sup> Report on "The procedure governing the admissibility of confession statements in criminal proceedings" published in July 2000.

- (c) Archives law;
- (d) Access to information; and
- (e) Periodical payments for future pecuniary loss in personal injury cases.

Mechanism to monitor the implementation of the LRC's recommendations

6. Arising from the public concern about the delays in implementing the LRC proposals, the Director of Administration issued a set of guidelines in October 2011 under which 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 the LRC's 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 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 the following mechanism for monitoring the Government's progress in implementing the LRC's 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 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.

8. The mechanism was endorsed by the House Committee at its meeting on 2 March 2012. Pursuant to the above mechanism, SJ submitted the first, second, third and fourth annual reports to the Panel at its meetings on 25 June 2013, 27 May 2014, 20 July 2015 and 23 May 2016 respectively.

### **Discussions of the Panel**

9. Major views/concerns expressed by Panel members on the implementation of the LRC recommendations by B/Ds and the responses from SJ are summarized below.

#### Progress of implementation of the LRC's recommendations

10. Members expressed concern that the Administration had spent a long time in considering and implementing the LRC's recommendations on various reports, and 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.

11. SJ 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 monitoring. However, the Administration encountered various difficulties in implementing some of the recommendations. For example, although LRC considered that repealing excepted offences as listed in Schedule 3 to the Criminal Procedure Ordinance (Cap 221) was a technical amendment which would meet with support from the community, some members of the Panel as well as some non-governmental organizations were of the view that if the proposal was implemented, the repealing of excepted offences would give a wrong message to the community that rape and indecent assault were no longer serious offences, as imposing suspended sentences for these excepted offences would be an option for the court. Another example was that although LRC recommended that a system should be put in place to regulate charities and enhance their transparency the proposal received divergent feedback during the consultation period.

12. SJ pointed out that if there was a lack of consensus in the community on a certain LRC proposal, it would be difficult for the

relevant B/Ds to implement the proposal. He further stressed that LRC spent a lot of time and resources in coming up with their reports, and LRC did not want to see all this go to waste and the reports gather dust. However, LRC could not prevent B/Ds and stakeholders from holding different views.

### Resources and the work of LRC

13. Noting that LRC members 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 that the Administration should consider seeking funding to employ more full-time staff to support the work of LRC. SJ 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. At the Panel meeting on 23 May 2016, a member asked when SJ would come up with a decision on making LRC into a full-time body staffed with full-time commission members and professional staff as mentioned in the previous meetings of the Panel. SJ responded that after having studied the practices adopted by LRCs in other jurisdictions, a paper would be submitted to LRC within the current term Government on ways to improve the work of LRC, including ways to better follow up on the LRC's recommendations.

14. 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.

15. 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.

16. SJ advised 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 LegCo, the academic sector and the public. Furthermore, since proposals made by LRC might involve policy consideration and draw different views from the stakeholders, bureaux might need to carry out detailed research and public consultation before introducing any bill into the legislature.

17. In response to a member's enquiry raised at the Panel meeting on 23 May 2016 as to whether LRC had consulted the views of the relevant stakeholders in coming up with their recommendations on law reform, SJ pointed out that although LRC and its sub-committees would issue papers for public consultation on the topic that they had decided to study, not all views could be collected during that first round of public consultation, different views might emerge after the publication of the LRC's final report as LRC focused on the topic from the legal perspective, whereas other factors or considerations might emerge when the topic was open for subsequent public consultation, and that was beyond LRC's control.

#### Implementation status of specific LRC projects

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

18. 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 the 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.

19. As stated in SJ's fourth report (LC Paper No. CB(4)994/15-16(04)) on the implementation status of the LRC's recommendations, the Labour and Welfare Bureau had, in conjunction with DoJ, the Home Affairs Bureau, the Social Welfare Department, the Judiciary and other relevant B/Ds, prepared the draft Children Proceedings (Parental Responsibility) Bill to implement the bulk of the LRC's recommendations. A public consultation on the draft Children Proceedings (Parental Responsibility) Bill was conducted from

25 November 2015 to 25 March 2016, and the Labour and Welfare Bureau was analyzing the views collected.

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

20. Noting that the recommended review of the then limitations imposed on the collection and use of "positive credit data" was implemented without legislation by the Privacy Commissioner for Personal Data in the Code of Practice on Consumer Credit Data 2002, yet the other recommendations as stated in the LRC Report on "The regulation of debt collection practices" were rejected by the Administration in September 2005, a member enquired at the Panel meeting on 23 May 2016 that whether LRC would conduct a fresh study on the need of regulating debt collection practices.

21. SJ explained that since 2005, he and CJ had been discussing whether there was a need to ask LRC to again review the adequacy of the existing law that governed the way in which creditors, debt collection agencies and debt collectors collected debts in Hong Kong outside the court system, and to recommend such changes in the law as might be thought appropriate. As there was no evidence that conspicuous worsening of the debt collection practices in Hong Kong had materially worsened, he and CJ decided that there was no need to review the subject matter for the time being. However, if there were new developments in the debt collection practices in Hong Kong or elsewhere, LRC might be asked to conduct a fresh review.

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

22. Members noted at the Panel meeting on 23 May 2016 that a cross-sector working group established by DoJ had held 13 meetings to study the proposals of the LRC Report on "Class actions", and a sub-committee of the working group had been formed to assist the working group on technical issues that might arise during its deliberations of the subject matter. Question was raised as to whether DoJ would publish an interim report on its consideration of the proposals made in the LRC Report.

23. SJ advised that the issues being examined by the working group and its subcommittee mainly concerned technical aspects of class actions, such as the definitions of "consumers" and "consumer disputes", possible funding models of class actions, the possibility of abuse of class actions and the safeguards to be provided in case of abuse of class actions. He however pointed out that whether to or not to introduce class actions in

Hong Kong was not purely a legal question. There were other considerations to be taken into account, such as the impact of class actions on the business environment and competitiveness of Hong Kong. Moreover, there was a need to strike a balance between protecting the interests of consumers and maintaining Hong Kong's competitive edge amongst other jurisdictions in the Asia-Pacific region. Another option to be considered was the introduction of alternative dispute mechanisms, instead of a class action regime, to resolve the relevant disputes. The Working Group was well aware of different opinions on the introduction of a class actions regime in Hong Kong. The Administration would map out the way forward as soon as practicable in the light of the recommendations to be made by the Working Group.

*LRC report on "Enduring powers of attorney: personal care" published in July 2011*

24. At the Panel meeting on 23 May 2016, members noted that DoJ had convened meetings of an inter-departmental working group to examine the recommendations in the LRC Report on "Enduring powers of attorney: personal care" and was preparing a draft bill, with a view to seeking views of legal professional bodies, the Judiciary and other stakeholders in 2016. Subject to the consultation result, it was planned that the proposed legislation would be introduced into LegCo in the 2016-2017 legislative session.

*LRC Report on "Privacy – Part 3: Stalking" published in October 2000*

25. In view of the divergent views over the implications of the recommendations made in the LRC Report on "Privacy – Part 3: Stalking" on constitutional rights, including freedom of the media and freedom of expression and to protect individuals from harassment, a member asked whether consideration would be given to first implementing the recommendations to deal with specific problems, such as amending the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) to deal with harassment by ex-spouses and introducing legislation against abusive debt collectors.

26. SJ advised that the Constitutional and Mainland Affairs Bureau ("CMAB") had decided not to legislate against stalking as none of the various formulations (i.e. the respective formulation put forward by the LRC and the Consultant commissioned by CMAB to study the experience of overseas jurisdictions in implementing their anti-stalking legislation and the "specified relations" approach) was supported by members of the Panel on Constitutional Affairs, the major stakeholders



or the public, as being able to achieve the objective of providing protection to all people alike against stalking, whilst at the same time avoiding interference with the freedoms of the press and expression. However, CMAB would closely monitor the need to introduce anti-stalking legislation to criminalize stalking in Hong Kong as well as the overseas experience of implementing anti-stalking legislation.

*LRC Report on "Arrest" published in November 1992 and LRC Report on "Substitute decision-making and advance directives in relation to medical treatment" published in August 2006*

27. In response to a member's concern raised at the Panel meeting on 23 May 2016 about the implementation progress of the recommendations made in the LRC Reports on "Arrest" and "Substitute decision-making and advance directives in relation to medical treatment", SJ responded that more than half of the endorsed recommendations made in the LRC Report on "Arrest" had been implemented by the Security Bureau, and the Bureau was reviewing some of the proposals in the light of the changes in United Kingdom's Police and Criminal Evidence Act 1984 and local enforcement experiences with a view to determining the way forward. As regards the LRC Report on "Substitute decision-making and advance directives in relation to medical treatment", SJ said that the Health and Welfare Bureau considered it more advisable to promote advance directives through legislative means when there was greater degree of awareness and consensus over the use of advance directives in the community.

#### Progress of ongoing projects under study by LRC

28. 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.

29. SJ 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 amongst 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.

### **Latest position**

30. SJ will submit its fifth annual report on the progress of implementing the LRC's recommendations by B/Ds to the Panel for its meeting scheduled for 26 June 2017.

### **Relevant papers**

31. A list of relevant papers is in the **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
20 June 2017

**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>

Meeting	Date	Paper
	20 July 2015 (Agenda item III)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>
	23 May 2016 (Agenda item IV)	<a href="#">Agenda</a> <a href="#">Minutes of meeting</a>

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