

立法會 *Legislative Council*

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Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2024

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information to facilitate members' consideration of the Statute Law (Miscellaneous Provisions) Bill 2024 ("the Bill"). It also summarizes the major views and concerns expressed by the Panel on Administration of Justice and Legal Services ("the Panel") on the systematic review of statutory laws of Hong Kong ("the systematic review of statutory laws") which are relevant to the Bill.

Background

Omnibus bills

2. An information paper on the major legislative proposals to be included in the Bill was circulated to members of the Panel on 23 February 2024. According to the Administration, it has been using statute law (miscellaneous provisions) bills (i.e. "omnibus bills") in appropriate cases as an efficient way of effecting miscellaneous amendments to update or improve existing legislation from time to time. The amendments included are largely minor, technical and non-controversial in nature but are important for the purpose of updating or improving existing legislation. This avoids the need to make bids for separate slots relating to each ordinance, the amendments to which typically involve only a few clauses.

3. As advised by the Administration, since the enactment of the last Statute Law (Miscellaneous Provisions) Ordinance in 2020, it has become necessary to introduce another omnibus bill to make miscellaneous amendments to various ordinances, and the opportunity is also taken to make straightforward adaptation of colonial references and repeal obsolete provisions in various ordinances in a consolidated manner. Time is now ready to introduce another omnibus bill to cater for these proposed amendments.

Systematic review of statutory laws of Hong Kong

4. As pointed out by the Administration, the Law Reform Commission (“LRC”) Secretariat spearheaded in 2022 an exercise to conduct a systematic review of statutory laws which consists of work mainly in three aspects, i.e. (i) adaptation of laws; (ii) consolidation of laws; and (iii) repeal of obsolete laws. The adaptation of laws refers to the process of (a) first identifying provisions or references in statute books that were in force in Hong Kong before 1 July 1997 but must, for the time being, be construed with such modifications, adaptations, limitations and exceptions as may be necessary in compliance with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People’s Republic of China (“PRC”), and (b) thereafter amending them as necessary to properly reflect the policy intent of the relevant policy bureaux in the light of the resumption of the exercise of sovereignty over Hong Kong by PRC. As far as the repeal of obsolete laws is concerned, the Administration has pointed out that the relevant provisions are not necessarily adaptation-related and, when ready for legislative action, are also included in the Bill.

5. On 25 March 2024, the LRC Secretariat reported to the Panel on the progress of the systematic review of statutory laws, and stated in its paper to the Panel that since the last report to the Panel in July 2023, more positive outcome had been achieved by adopting the approach of “dealing with simple issues before the difficult ones” to cover, by stages, as many of the outstanding ordinances as practicable. Having been in close liaison with 13 responsible bureaux and the Constitutional and Mainland Affairs Bureau, the LRC Secretariat was able to confirm at the time that there were a total of 101 pieces of legislation which had been the subject of careful examination, with the majority of them already included in the Bill.

Statute Law (Miscellaneous Provisions) Bill 2024

6. The Bill was published in the Gazette on 10 May 2024 and received its First Reading at the Legislative Council meeting of 22 May 2024. The proposed amendments in the Bill can be broadly categorized into two groups: amendments without adaptation of laws elements; and amendments with adaptation of laws elements—

- (a) for amendments without adaptation of laws elements, including:
 - (i) amendments to the Evidence Ordinance (Cap. 8) to provide for the admission of a print made from a microfilm the production of which involves digital means as evidence in criminal and/or civil proceedings;

- (ii) an amendment to the District Court Ordinance (Cap. 336) to provide for the provisions on service in relation to an appeal made by the Secretary for Justice (“SJ”) against a verdict or order of acquittal by way of case stated; and
 - (iii) amendments to the Legislation Publication Ordinance (Cap. 614) to empower SJ to make formatting amendments to certain database instruments; and
- (b) for amendments with adaptation of laws elements, amendments mainly to bring 73 ordinances (including subsidiary legislation) into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of PRC.

Past discussions

7. The LRC Secretariat reported to Members on the progress of the systematic review of statutory laws at a number of Panel meetings.¹ Members noted that section 6 of the Hong Kong Reunification Ordinance amended the Interpretation and General Clauses Ordinance (Cap. 1) by adding Schedule 8 to clarify the construction on and after 1 July 1997 of words and expressions in laws previously in force, so that, for example, any reference in any provision to “Her Majesty”, “the Crown”, “the British Government” or “the Secretary of State”, among others, should be construed as a reference to the Government of the Hong Kong Special Administrative Region (“HKSAR”). Members were of the view that as the 22 provisions in the aforesaid Schedule 8 were quite detailed, the Schedule should be helpful to the responsible bureaux in reflecting on the relevant areas and simplifying complex issues.

8. The LRC Secretariat advised that on 23 February 1997, the Standing Committee of the National People’s Congress made a decision on the interpretation of the laws previously in force as part of the laws of HKSAR pursuant to Article 160 of the Basic Law. This was currently an important basis for policy bureaux to consider relevant issues. However, references to “the Crown” (rendered as “官方” in Chinese) and “Her Majesty” in existing legislation could not be mechanically and directly replaced by references to a particular organization or class of persons, as there were many issues that had to be taken into account in the adaptation of laws.

¹ These include the Panel meetings held on 23 May 2022, 5 December 2022, 24 July 2023 and 25 March 2024.

9. Members expressed concern that the lay public would be alarmed by the many colonial references (e.g. “the Crown”) still remaining in statute law. They pointed out that unlike legal practitioners, the lay public might not understand the legal issues involved, nor would they know how such references were to be construed legally. The LRC Secretariat advised that this was why it was important to speed up the adaptation exercise instead of relying on the rules of construction stipulated in Cap. 1 (i.e. the general interpretative principles to construe the provisions pending adaptation in accordance with section 2A of, and Schedules 8 and 9 to, Cap. 1) and, in the meantime, the Administration would spare no effort in keeping the public informed of the situation.

10. Members were concerned that as the LRC Secretariat adopted the approach of “dealing with simple issues before the difficult ones” in the adaptation of laws exercise, those more difficult pieces of legislation to be adapted would remain a non-starter or even be shelved eventually. The LRC Secretariat explained that this approach was adopted mainly to help identify those pieces of legislation for which a more concrete timetable for adaptation could be set. Classifying a piece of legislation as difficult for adaptation only meant that a concrete timetable could not be set at this stage. The LRC Secretariat had already identified the bureaux/departments responsible for the relevant legislation, as well as the specific issues and problems pertaining to such legislation, and was actively pursuing the appropriate solutions.

11. The LRC Secretariat also advised that in maintaining the momentum of the adaptation of laws exercise, it would adhere to the approach of “dealing with simple issues before the difficult ones”. It would carry on making proactive efforts in bringing the relevant responsible and supporting bureaux together and liaising with the relevant legal division(s) of the Department of Justice (“DoJ”). The LRC Secretariat would also maintain communication with representatives from the Central Authorities to make sure that the overall plan was moving on the right track and work towards the timely resolution of complex and intricate issues as could be identified. The LRC Secretariat would, as far as practicable, endeavour to draw up a realistic timetable for each of the ordinances to be adapted, except for certain legislation which needed to be further followed up before a more concrete timetable could be formulated.

12. According to the LRC Secretariat, many legal provisions requiring adaptation were hidden in the legislation and required careful and deliberate identification. In adapting certain legislation, apart from understanding the legislative intent behind the original drafting of the legislation, the LRC Secretariat must also work with the relevant policy bureaux and have a clear understanding of the original policy intent.

13. There was concern that some policy bureaux had, when introducing amendment bills, incidentally sought to make adaptation amendments in respect of references to “Her Majesty”, “the Sovereign”, etc., but the bureaux had also made a note to the effect that if the provisions were relevant to other bureaux and were not the subject of the current amendment exercise, they would leave it to the other bureaux to amend such provisions. Members were of the view that if a bureau introduced a bill and was aware that the above situation would arise, coordination should be made with the other bureaux concerned. The LRC Secretariat advised that any adaptation of laws should be completed in one go as far as possible. With the coordination of the LRC Secretariat, while some ordinances might fall under the purview of different bureaux, ultimately there would still be a lead bureau to take forward the adaptation of laws involving more than one piece of legislation.

14. Members commented that in some English-speaking common law jurisdictions, the prevailing trend was to use simple and concise English instead of English expressions that were too long or outdated. While it was not always necessary to replace certain Latin expressions in legal provisions, obsolete terms or phrases might have been replaced one after another. The LRC Secretariat advised that in the adaptation of laws exercise, expressions that were easily understood by the general public and more modern would be used, and that the Law Drafting Division of DoJ was actively working in this regard, and would use Chinese or English terms or phrases that were comprehensible to the lay public in drafting legislation, whether in Chinese or English. The LRC Secretariat would continue to monitor the situation, and draft adaptation amendments in plain Chinese and English.

Latest development

15. The House Committee decided on 24 May 2024 to form a Bills Committee to scrutinize the Bill.

Relevant papers

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

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List of relevant papers

Meeting	Date	Papers
Panel on Administration of Justice and Legal Services	February 2024	Information paper provided by the Administration
	25 March 2024	Agenda Item III: Law Reform Commission Secretariat – Progress on the Systematic Review of Statutory Laws of Hong Kong Administration's paper Minutes

Council Business Division 4
Legislative Council Secretariat
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