

**For discussion
on 23 May 2022**

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

**Law Reform Commission Secretariat –
Progress on Systematic Review of Statutory Laws of Hong Kong**

This paper is to inform Members of the progress on the systematic review of statutory laws of Hong Kong being undertaken by the Law Reform Commission Secretariat (“**LRC Secretariat**”).

BACKGROUND

2. It was last reported in a paper submitted by the Department of Justice to the Administration of Justice and Legal Services Panel of the Legislative Council (“**AJLS Panel**”) for its meeting on 9 February 2022 that the LRC Secretariat is undertaking an exercise to conduct a systematic review of statutory laws of Hong Kong regularly which consists of work mainly in (a) adaptation of laws, (b) consolidation of laws and (c) repeal of obsolete laws.

3. It is with a view to keeping the laws of Hong Kong up-to-date and commensurate with its status as a modern society governed by the rule of law under the constitutional framework of “one country, two systems” that the LRC Secretariat has embarked upon the task to undertake this review exercise.

ADAPTATION OF LAWS

4. The adaptation of laws, which is long overdue and to which priority has been afforded, refers to the process of (a) first identifying provisions or references in our statute books (such as “binding on the Crown”, “Her Majesty” and “Secretary of State”) 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 in accordance with section 2A of the Interpretation and General Clauses Ordinance (Cap. 1) and Schedules 8 and 9 thereto, and (b) thereafter amending them as necessary to properly reflect the policy intent of the relevant policy bureau in the light of the resumption of the exercise of Chinese sovereignty over Hong Kong. At the commencement of the systematic review, 65 pieces of legislation were identified as containing provisions requiring adaptation.

5. The LRC Secretariat’s role is to manage the exercise and to (a) monitor progress in the programme to ensure that the necessary legislative process can commence timeously upon the initiation of the responsible government bureau or department (“**responsible bureau**”) and (b) report to the AJLS Panel at suitable intervals.

6. For this purpose, the responsible bureau of an ordinance is responsible for ascertaining and formulating the relevant policy pertaining to the phrases or provisions that have to be adapted. In so doing, the responsible bureau may have to co-ordinate on cross-bureaux issues arising from the ordinance. In the process, it is necessary to ensure that the intention in the Decision of the National

People's Congress Standing Committee made on 23 February 1997 in accordance with Article 160 of the Basic Law is reflected in any amendments to be made.

7. In order to keep the momentum, an initial programme was devised by the LRC Secretariat, in the course of a stock-take of the possible issues arising with regard to the pieces of legislation so far identified as warranting examination by the responsible bureau, to set a target time for the Government to decide the way forward for draft drafting instructions, if necessary, to be prepared and keep track of the progress. Each of the targets set out in the initial programme towards which the LRC Secretariat is working (as tabulated under **Annex I** which is not exhaustive of all items identified) may have to be revised in the light of the feedback received from the responsible bureaux (see further discussion below) which will take into account the need to consult stakeholders and the relevant bodies of the Central Authorities as appropriate and obtain legal advice as may be required through the established channels.

8. To implement the programme, the LRC Secretariat in February 2022 started approaching twelve responsible bureaux (those bureaux are set out on a list in **Annex II**) and asked them to:

- (a) identify all such provisions and references in the ordinances under their responsibility that require adaptation; and
- (b) decide the policy intent of what those provisions and references are supposed to mean under the current constitutional order,

with a view that they be suitably adapted (whether by way of amending them to read in a particular way or to have them repealed). In addition, the responsible bureaux are expected to come up with a time frame within which to work towards the completion of the adaptation exercise for each of the pieces of legislation under their purview.

9. At the same time, the responsible bureaux are also asked, in the course of their examination, to identify provisions and references which may have become obsolete and form a view as to whether they should be repealed or modernised as the case may be.

10. The LRC Secretariat is now in a position to report that, upon closer scrutiny and after approaching the 12 responsible bureaux, there are, at this stage, a total of 74 pieces of legislation which warrant examination on adaptation. A list containing those 74 pieces of legislation as identified is in **Annex III**.

11. Among these 74, and after examination by the responsible bureau, the LRC Secretariat is pleased to report that:

- (a) the relevant references in respect of two pieces of legislation which respectively deal with the boundary of the Administrative Division of the Hong Kong Special Administrative Region and delineation of military sites as they now appear in the Laws of Hong Kong¹ should be retained after confirmation that such references are consistent with the current constitutional order and up-to-date;

¹ They are found under the Shipping and Port Control Ordinance (Cap. 313) and Public Order Ordinance (Cap. 245).

- (b) the relevant references in the Road Tunnels (Government) Ordinance (Cap. 368) have been suitably adapted with the passage of the Free-Flow Tolling (Miscellaneous Amendments) Ordinance 2021;
- (c) the remaining uncommenced provisions made in the 2009 amendments to the Merchant Shipping (Safety) Ordinance (Cap. 369) will take effect on 1 July 2022 to have references in the principal ordinance suitably adapted;
- (d) in respect of references in one piece of legislation, i.e. the Wills Ordinance (Cap. 30), which warrants examination for adaptation, the Legislative Council has already been informed that the relevant part of that ordinance which is not yet in operation is intended to be repealed when an opportunity arises;
- (e) attention is being given to four pieces of legislation the adaptation for which will be taken care of in the legislative exercise to implement Article 23 of the Basic Law;
- (f) another 38 pieces of legislation have been acknowledged by the responsible bureaux to require adaptation in some way; and
- (g) the remaining 24 pieces of legislation are pending substantive responses from the responsible bureaux.

12. In addition to the above, there are three pieces of legislation in respect of which the responsible bureau has indicated to the LRC Secretariat that there is an intention to have them repealed in whole as they become obsolete. The pace at which they will be repealed will be a matter for the responsible bureau subject to the overall legislative priority of the Government.

13. In the light of the above, no further action is required for three of the items examined (see paragraph 11(a)&(b) above) whereas 8 of the items appearing on the initial programme are likely to be able to proceed on target for the making of policy decisions over the giving of draft drafting instructions with a view to having legislative proposals taken forward with the Legislative Council by the responsible bureau subject to the priority accorded them in the Government's overall legislative programme.

14. Further liaison will be carried out as necessary with the responsible bureaux to have:

- (a) a target time set for any of the additional items since identified as requiring adaptation, and
- (b) the target time for the remaining items realistically revised in the light of their responses.

15. It is an on-going part of the LRC Secretariat's work in this exercise to keep track and to report to the AJLS Panel on progress accordingly.

REPEAL OF OBSOLETE LAWS

16. In the course of this adaptation exercise, it is incidentally discovered that the provisions in the Merchant Shipping Ordinance (Cap. 281) which contain colonial references have in fact expired in 1985. Those provisions will be marked as “expired” in due course in the verification exercise for e-Legislation.

17. In addition, there are:

- (a) one piece of legislation which has been identified as being obsolete by the responsible bureau which intends to have it repealed in whole when an appropriate legislative slot can be identified; and
- (b) another piece of legislation, namely the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413), which contains an anachronistic reference to the “Secretary for Economic Services” and it is anticipated that this erroneous reference will have been dealt with upon completion of the intended exercise for the re-structuring of government bureaux for the 6th term of Government.

18. There are also various pieces of subsidiary legislation made under the Immigration Ordinance (Cap. 115) and the Public Order Ordinance (Cap. 245) which have been identified by the responsible bureau as being obsolete and they are intended to be repealed at the next available opportunity.

CONSOLIDATION OF LAWS

19. As to the consolidation of laws, its major objective is to improve accessibility of the law through statutory laws which are easily searchable, clear and intelligible to implement a core concept of the principles of the rule of law. Achieving this aspect of the overall objective of the systematic review will promote and advance the rule of law in Hong Kong. While the LRC Secretariat has conducted a preliminary examination to identify suitable areas of law for consideration by the relevant responsible bureau(x) and will carry on with this component of the review as far as the available resources permit, the LRC Secretariat's immediate focus in performing its role in the review exercise is on the continued follow-up with the responsible bureaux in making sure that the 24 pieces of legislation in respect of which no substantive responses have yet been provided will receive proper attention.

THE WAY FORWARD

20. Although a major component of the systematic review of statutory laws of Hong Kong exercise, to which priority has already been given, is the adaptation of laws, work on the review for the possible repeal of obsolete laws has already commenced.

21. It would ultimately be a matter for the responsible bureau of any particular ordinance or related ordinances to decide how to proceed with the required adaptation or have them suitably updated or consolidated, as the case may be.

22. It will also be useful to note that for legislative amendment exercises arising from the adaptation exercise or to repeal

obsolete provisions, it will continue to be a matter for the responsible bureau to take the proposed amendments to the Legislative Council. The LRC Secretariat will continue to monitor the progress to ensure the review exercise could be completed timeously and without further delay given that 25 years have passed and it is high time that this exercise was completed. Accordingly, the LRC Secretariat will continue to report on progress to the AJLS Panel at suitable intervals (every six months initially). It is vital to note that the primary responsibility for ensuring that any necessary legislative process to bring the law up-to-date and readily accessible is completed rests on the responsible bureaux.

Law Reform Commission Secretariat
May 2022

Non-exhaustive List of items of Legislation under the Adaptation Programme

LRC Secretariat's initial projected target time within which the Responsible Bureau is expected to be able to decide the way forward for Draft Drafting Instructions, if necessary, to be prepared

First 14 months (From February 2022)													
Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23
Widows and Orphans Pension Ordinance (Cap. 94)													
Summary Offences Ordinance (Cap. 228)													
Public Order Ordinance (Cap. 245)													
Shipping and Port Control Ordinance (Cap. 313)													
Employment Ordinance (Cap. 57)													
Audit Ordinance (Cap. 122)													
Maintenance Orders (Reciprocal Enforcement) Ordinance (Cap. 188)													
Crown Proceedings Ordinance (Cap. 300)													
Foreign Corporations Ordinance (Cap. 437)													
Merchant Shipping (Seafarers) Ordinance (Cap. 478)													

First 14 months (From February 2022)													
Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23
Immigration Ordinance (Cap. 115)													
Births and Deaths Registration Ordinance (Cap. 174)													
Registration of Persons Regulations (Cap. 177A)													
Law Amendment and Reform Consolidation Ordinance (Cap. 23) ¹													
Employees' Compensation Ordinance (Cap. 282) ²													
Occupiers Liability Ordinance (Cap. 314) ³													
District Court Ordinance (Cap. 336) ⁴													
Small Claims Tribunal Ordinance (Cap. 338) ⁵													
Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ⁶													
Civil Liability (Contribution) Ordinance (Cap. 377) ⁷													
Occupational Deafness (Compensation) Ordinance (Cap. 469) ⁸													
Judgments (Facilities for Enforcement) Ordinance (Cap. 9)													
Probate and Administration Ordinance (Cap. 10)													
Foreign Judgements (Restriction on Recognition & Enforcement Ordinance (Cap. 46)													

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- ¹ May be subject to decision on the way forward for preparation of Draft Drafting Instructions in respect of the Crown Proceedings Ordinance (Cap. 300).
- ² Same as footnote 1 above.
- ³ Same as footnote 1 above.
- ⁴ Same as footnote 1 above.
- ⁵ Same as footnote 1 above.
- ⁶ Same as footnote 1 above.
- ⁷ Same as footnote 1 above.
- ⁸ Same as footnote 1 above.

First 14 months (From February 2022)													
Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23
Misrepresentation Ordinance (Cap. 284) ⁹													
Air Pollution Control Ordinance (Cap. 311) ¹⁰													
Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319)													
Limitation Ordinance (Cap. 347) ¹¹													
Waste Disposal Ordinance (Cap. 354) ¹²													
Water Pollution Control Ordinance (Cap. 358) ¹³													
Noise Control Ordinance (Cap. 400) ¹⁴													
Bankruptcy Ordinance (Cap. 6) ¹⁵													
Recognition of Trusts Ordinance (Cap. 76) ¹⁶													
Perpetuities and Accumulations Ordinance (Cap. 257) ¹⁷													
Enforcement of Rights (Extension of Time) Ordinance (Cap. 252) ¹⁸													
Court of Final Appeal Ordinance (Cap. 484) ¹⁹													
High Court Ordinance (Cap. 4)													

⁹ Same as footnote 1 above.

¹⁰ Same as footnote 1 above.

¹¹ Same as footnote 1 above.

¹² Same as footnote 1 above.

¹³ Same as footnote 1 above.

¹⁴ Same as footnote 1 above.

¹⁵ Same as footnote 1 above.

¹⁶ Same as footnote 1 above.

¹⁷ Same as footnote 1 above.

¹⁸ May be subject to decision on the way forward for preparation of Draft Drafting Instructions in respect of the Crown Proceedings Ordinance (Cap. 300) related legislation.

¹⁹ May be subject to decision on the way forward for preparation of Draft Drafting Instructions in respect of the High Court Ordinance (Cap. 4).

First 14 months (From February 2022)													
Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23
Matrimonial Causes Ordinance (Cap. 179) ²⁰													
Parent and Child Ordinance (Cap. 429) ²¹													
Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434) ²²													
Carriage by Air Ordinance (Cap. 500) ²³													
Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) ²⁴													
Nuclear Material (Liability for Carriage) Ordinance (Cap. 479) ²⁵													
Bunker Oil Pollution (Liability and Compensation) Ordinance (Cap. 605) ²⁶													
Evidence Ordinance (Cap. 8)													
Defamation Ordinance (Cap. 21)													
Wills Ordinance (Cap. 30)													
Pilotage (Disciplinary Procedure) Regulations (Cap. 84B) ²⁷													
Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)													
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)													
Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272)													
Road Tunnels (Government) Ordinance (Cap. 368)													
Merchant Shipping (Safety) Ordinance (Cap. 369)													

²⁰ Same as footnote 1 above.

²¹ Same as footnote 1 above.

²² Same as footnote 1 above.

²³ Same as footnote 1 above.

²⁴ May be subject to decision on the way forward for preparation of Draft Drafting Instructions in respect of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319).

²⁵ Same as footnote 24 above.

²⁶ Same as footnote 24 above.

²⁷ May be subject to decision on the way forward for preparation of Draft Drafting Instructions in respect of the Evidence Ordinance (Cap. 8).

First 14 months (From February 2022)													
Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23	Feb 23	Mar 23
Roads (Works, Use and Compensation) Ordinance (Cap. 370)													
Tsing Ma Control Area Ordinance (Cap. 498)													
Discovery Bay Tunnel Link Ordinance (Cap. 520)													

Annex II

List of Responsible Bureaux approached by the Law Reform Commission Secretariat

1. Chief Secretary for Administration's Office (Administration Wing)
2. Judiciary Administration
3. Department of Justice
4. Civil Service Bureau
5. Commerce and Economic Development Bureau
6. Development Bureau
7. Environment Bureau
8. Financial Services and the Treasury Bureau
9. Home Affairs Bureau
10. Labour and Welfare Bureau
11. Security Bureau
12. Transport and Housing Bureau

Annex III

List of legislation which warrants examination by the Responsible Bureau

	Chapter	Title of Legislation
1.	Cap. 4	High Court Ordinance
2.	Cap. 6	Bankruptcy Ordinance
3.	Cap. 8	Evidence Ordinance
4.	Cap. 9	Judgments (Facilities for Enforcement) Ordinance
5.	Cap. 10	Probate and Administration Ordinance
6.	Cap. 21	Defamation Ordinance
7.	Cap. 23	Law Amendment and Reform (Consolidation) Ordinance
8.	Cap. 30	Wills Ordinance
9.	Cap. 46	Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance
10.	Cap. 55	Labour Relations Ordinance
11.	Cap. 57	Employment Ordinance
12.	Cap. 76	Recognition of Trusts Ordinance
13.	Cap. 84B	Pilotage (Disciplinary Procedure) Regulations
14.	Cap. 94	Widows and Orphans Pension Ordinance
15.	Cap. 98	Post Office Ordinance
16.	Cap. 106	Telecommunications Ordinance
17.	Cap. 115	Immigration Ordinance
18.	Cap. 122	Audit Ordinance
19.	Cap. 174	Births and Deaths Registration Ordinance
20.	Cap. 177A	Registration of Persons Regulations
21.	Cap. 179	Matrimonial Causes Ordinance
22.	Cap. 188	Maintenance Orders (Reciprocal Enforcement) Ordinance
23.	Cap. 200	Crimes Ordinance
24.	Cap. 221	Criminal Procedure Ordinance
25.	Cap. 221D	Legal Aid in Criminal Cases Rules
26.	Cap. 228	Summary Offences Ordinance
27.	Cap. 232	Police Force Ordinance

28.	Cap. 237	Fixed Penalty (Traffic Contraventions) Ordinance
29.	Cap. 240	Fixed Penalty (Criminal Proceedings) Ordinance
30.	Cap. 245	Public Order Ordinance
31.	Cap. 252	Enforcement of Rights (Extension of Time) Ordinance
32.	Cap. 257	Perpetuities and Accumulations Ordinance
33.	Cap. 272	Motor Vehicles Insurance (Third Party Risks) Ordinance
34.	Cap. 281	Merchant Shipping Ordinance
35.	Cap. 282	Employees' Compensation Ordinance
36.	Cap. 284	Misrepresentation Ordinance
37.	Cap. 300	Crown Proceedings Ordinance
38.	Cap. 311	Air Pollution Control Ordinance
39.	Cap. 313	Shipping and Port Control Ordinance
40.	Cap. 314	Occupiers Liability Ordinance
41.	Cap. 319	Foreign Judgments (Reciprocal Enforcement) Ordinance
42.	Cap. 332	Trade Unions Ordinance
43.	Cap. 336	District Court Ordinance
44.	Cap. 338	Small Claims Tribunal Ordinance
45.	Cap. 347	Limitation Ordinance
46.	Cap. 354	Waste Disposal Ordinance
47.	Cap. 358	Water Pollution Control Ordinance
48.	Cap. 360	Pneumoconiosis and Mesothelioma (Compensation) Ordinance
49.	Cap. 368	Road Tunnels (Government) Ordinance
50.	Cap. 369	Merchant Shipping (Safety) Ordinance
51.	Cap. 370	Roads (Works, Use and Compensation) Ordinance
52.	Cap. 377	Civil Liability (Contribution) Ordinance
53.	Cap. 400	Noise Control Ordinance
54.	Cap. 414	Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance
55.	Cap. 415	Merchant Shipping (Registration) Ordinance
56.	Cap. 429	Parent and Child Ordinance
57.	Cap. 434	Merchant Shipping (Limitation of Shipowners Liability) Ordinance
58.	Cap. 436	Western Harbour Crossing Ordinance
59.	Cap. 437	Foreign Corporations Ordinance
60.	Cap. 460	Security and Guarding Services Ordinance
61.	Cap. 469	Occupational Deafness (Compensation) Ordinance

62.	Cap. 474	Tai Lam Tunnel and Yuen Long Approach Road Ordinance
63.	Cap. 478	Merchant Shipping (Seafarers) Ordinance
64.	Cap. 479	Nuclear Material (Liability for Carriage) Ordinance
65.	Cap. 484	Hong Kong Court of Final Appeal Ordinance
66.	Cap. 498	Tsing Ma Control Area Ordinance
67.	Cap. 500	Carriage by Air Ordinance
68.	Cap. 520	Discovery Bay Tunnel Link Ordinance
69.	Cap. 521	Official Secrets Ordinance
70.	Cap. 605	Bunker Oil Pollution (Liability and Compensation) Ordinance
71.	Cap. 1001	Mercantile Marine Assistance Fund Ordinance
72.	Cap. 1023	Hongkong and Kowloon Wharf and Godown Company Limited (By-laws) Ordinance
73.	Cap. 1034	Masonic Benevolence Fund Incorporation Ordinance
74.	Cap. 1055	Zetland Hall Trustees Incorporation Ordinance