

Head 92 — DEPARTMENT OF JUSTICE

Controlling officer: the Director of Administration and Development will account for expenditure under this Head.

Estimate 2003–04 **\$988.4m**

Establishment ceiling 2003–04 (notional annual mid-point salary value) representing an estimated 1 037 non-directorate posts as at 31 March 2003 rising by six posts to 1 043 posts as at 31 March 2004..... **\$424.9m**

In addition there will be an estimated 73 directorate posts as at 31 March 2003 and as at 31 March 2004.

Capital Account commitment balance **\$5.5m**

Controlling Officer's Report

Programmes

<p>Programme (1) Prosecutions Programme (2) Civil Programme (3) Legal Policy Programme (4) Law Drafting Programme (5) International Law</p>	<p>These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).</p>
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Detail

Programme (1): Prosecutions

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	382.0	387.4 (+1.4%)	405.9 (+4.8%)	406.6 (+0.2%)

Aim

2 The aim is to advise and decide whether or not criminal proceedings should be undertaken and to prosecute cases in the courts.

Brief Description

3 The Prosecutions Division advises on and prosecutes criminal cases in all the courts in Hong Kong. In most appeals to the Court of Final Appeal and the Court of Appeal, a senior member of the Prosecutions Division appears in court to represent the prosecution. In many cases in the Court of First Instance and some in the District Court, the prosecution is conducted by Government Counsel. Most of the cases in the Magistrates' Court are prosecuted by Court Prosecutors. Some cases are briefed out to members of the private Bar and solicitors in private practice. The Division also advises the law enforcement agencies generally on criminal law and practice and the effect of legislation.

4 These advocacy and advisory functions are performed by various specialist sections within the Prosecutions Division. These sections deal with trial preparation, trials, training and developing bilingualism, vice, obscenity and gambling cases, anti-terrorism, triads and organised crimes, complaints against Police, appeals, narcotics, the Basic Law and human rights, immigration cases, coroners' inquests, labour cases, domestic proceeds of crime and Inland Revenue cases, computer crime and copyright cases, Independent Commission Against Corruption cases, Customs & Excise cases, commercial crime cases, and miscellaneous advice.

5 In 2002, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

6 The key performance measures are:

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
cases conducted by Government Counsel	4 206	4 318	4 320
cases conducted by Counsel instructed to prosecute	798	980	850
average number of court days for court specialists.....	103	100	100
number of court days undertaken by Government Counsel who are not court specialists	4 048	4 422	4 425

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	2001 (Actual)	2002 (Actual)	2003 (Estimate)
number of court days undertaken by Court Prosecutors in Magistrates' Court	14 537	14 015	14 300
number of court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors.....	797	691	340
number of trials prepared in the Court of First Instance.....	432	433	435
number of trials prepared in the District Court.....	537	619	620
items of legal advice provided.....	15 737	16 579	16 600
number of appeals conducted	1 697	1 712	1 715

7 The conviction rates for 2001 and 2002 are:

	2001 (Actual)	2002 (Actual)
Magistrates' Court.....	77.0%	76.9%
District Court.....	84.7%	86.2%
Court of First Instance.....	90.8%	90.2%

It should be noted that while it is the duty of Counsel and Court Prosecutors to prosecute vigorously in courts, they have to act in a fair and objective manner. It is wrong to strive to secure a conviction at all costs. The question of guilt or innocence is a matter for the court to decide. Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators. They are published regularly for reference only.

Matters Requiring Special Attention in 2003–04

8 During 2003–04, the Division will:

- develop its capacity to advise on and prosecute terrorist cases and market misconduct cases;
- enhance the efficacy of its in-house training modules; and
- continue to provide training for counsel to conduct court proceedings in Chinese.

Programme (2): Civil

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	290.4	387.8 (+33.5%)	358.7 (–7.5%)	377.5 (+5.2%)

Aim

9 The aim is to provide legal advice to the Government in civil matters, to undertake civil litigation and to draft contracts on commercial and other matters.

Brief Description

10 The work of the Civil Division involves:

- representing the Government and other public bodies in courts and tribunals in all forms of civil litigation and dispute resolution (including arbitration and mediation);
- providing legal advice on planning, environment, housing and land law matters;
- providing legal advice on commercial law matters and drafting commercial contracts, licences and franchises; and
- providing legal advice on legislation and civil law matters to the Government.

11 In 2002, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

12 The key performance measures are:

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
civil proceedings (including non-construction arbitration) brought by Government	1 359	1 307	1 550

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	2001 (Actual)	2002 (Actual)	2003 (Estimate)
civil proceedings (including non-construction arbitration)			
brought against Government.....	4 843#	1 865#	1 830
number of person days of court appearances.....	923	1 009	1 180
number of civil litigation cases current on 31 December	15 923	14 572	14 350
items of legal advice provided.....	14 306	16 181	16 190
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted	395	505	530

Figures have included 3 794 and 166 right of abode claim cases for 2001 and 2002 respectively.

Matters Requiring Special Attention in 2003–04

13 During 2003–04, the Division will:

- advise on proceedings against the Government, in particular those involving Civil Service Regulations, right of abode claims, and compensation claims on land resumption related to the West Rail project;
- nominate a legal officer, a barrister or a solicitor as Counsel to the Insider Dealing Tribunal and, after the commencement of the Securities and Futures Ordinance on 1 April 2003, appoint Presenting Officers to conduct proceedings before the Market Misconduct Tribunal;
- draft, vet and advise on the English and Chinese texts of contracts, undertakings, tender documents, public franchises, licences and other legal documents for the Government;
- advise on the implementation of Hong Kong Disneyland;
- advise on a wide range of land related matters, including town planning, environmental protection, landlord and tenant matters, control of building operations, resumption and reclamation, sewage and flood control, new road and railway schemes and the proposed Tung Chung cable car system;
- advise on the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce (including the Certification Authority Recognition Office), transportation, television broadcasting and telecommunications (including anti-competition provisions) as well as proposals for reform;
- advise on privatisation, corporatisation and outsourcing of Government's commercial activities;
- advise on occupational retirement and provident fund schemes; and
- advise on the Securities and Futures legislation.

Programme (3): Legal Policy

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	62.4	66.6 (+6.7%)	66.7 (+0.2%)	67.1 (+0.6%)

Aim

14 The aim is to advise the Government on matters raising questions of legal policy; to assist in formulating policy, particularly in relation to the legal system and the legal profession; to provide support to the Secretary for Justice in relation to the discharge of her duties; to provide advice in respect of the Basic Law, human rights and constitutional affairs as well as the law and legal developments in the Mainland; and to review chosen areas of the law and provide secretariat support for the Law Reform Commission.

Brief Description

15 The work of the Secretary for Justice's Office and the Legal Policy Division includes:

- advising whether proposed legislation or particular policy is contrary to established principles underlying the legal system;
- providing support for the Secretary for Justice in relation to her duties as a member of the Executive Council, a designated officer attending meetings of the Legislature and as the principal legal adviser to the Chief Executive;
- advising on legal issues arising out of prisoners' petitions for remission, references of cases to the Court of Appeal under the Criminal Procedure Ordinance and responses to public enquiries and complaints;
- providing specialised human rights advice to ensure the consistency of policy and legislation with the human rights requirements of the Basic Law and of international treaties extended to Hong Kong;

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- promoting bills related to the legal system or effecting law reform or miscellaneous amendments to various ordinances;
- providing advice and information on the laws of the Mainland and developing working relationships with counterparts in the Mainland;
- providing advice to the Administration on procedures of the Legislature;
- providing advice on the Basic Law and promoting knowledge of the Basic Law; and
- giving advice and providing research and support to facilitate the work of the Law Reform Commission.

16 In 2002, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

17 The key performance measures are:

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
number of bills being promoted per session of the Legislature	1	2	2
number of petitions handled	42	63	60
items of written advice given on general legal policy issues ...	718	537	530
items of legal advice given on human rights issues	754	680	680
number of law reform projects being handled	11	14	12
number of speeches prepared (both for the Legislature and elsewhere)	68	113	110
items of legal advice given on Mainland law and related matters	155	183	180
items of legal advice given on the Basic Law and constitutional matters	1 108	1 186	1 180
number of Basic Law seminars conducted	16	24	20

Matters Requiring Special Attention in 2003–04

18 During 2003–04, the Secretary for Justice's Office and the Legal Policy Division will continue to:

- take forward the comprehensive review of legal education and training;
- explore opportunities for the legal profession to provide services in the Mainland;
- provide legal advice in respect of the implementation of the Basic Law and the development of our new constitutional order;
- provide prompt and reliable human rights advice including advice in respect of anti-discrimination legislation;
- develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law;
- develop working relationships with counterparts in the Mainland in particular areas which call for co-operation between the Hong Kong Special Administrative Region (HKSAR) and the Mainland; and
- organise talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in HKSAR and the Mainland.

Programme (4): Law Drafting

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	100.9	100.0 (–0.9%)	98.4 (–1.6%)	99.3 (+0.9%)

Aim

19 The aim is to draft legislation and to make the texts of legislation readily accessible.

Brief Description

20 The work of the Law Drafting Division involves:

- drafting of legislation in the English and Chinese languages and steering such draft legislation through the law-making process;

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- compiling the loose-leaf edition of the Laws of Hong Kong; and
- maintaining the Bilingual Laws Information System database.

21 In 2002, the aim of the programme was generally met and the overall performance of the programme as reflected by the key indicators is satisfactory.

22 The key performance measures are:

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
number of bills gazetted	49	27	30
number of subsidiary legislation gazetted	301	255	220
pages of bills/subsidiary legislation gazetted (English).....	2 160	1 658	1 250
pages of bills/subsidiary legislation gazetted (Chinese)	2 160	1 658	1 250
pages of legislation compiled for publication in the loose- leaf edition	8 063	7 686	6 000
pages of Committee Stage Amendments (English).....	135	943 [^]	450
pages of Committee Stage Amendments (Chinese).....	115	702 [^]	380

[^] The increase is mainly due to the enactment of the Securities and Futures Bill in 2002 involving considerable volume of amendments.

Matters Requiring Special Attention in 2003–04

23 During 2003–04, the Division will continue to:

- meet the Government's requirements for the drafting of legislation and incidental professional service in an effective manner;
- compile replacement pages for the loose-leaf edition of the Laws of Hong Kong; and
- update the Bilingual Laws Information System database in a timely and accurate manner.

Programme (5): International Law

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	36.4	40.0 (+9.9%)	38.2 (-4.5%)	37.9 (-0.8%)

Aim

24 The aim is to provide advice on international law issues to the Government and to handle requests for international legal co-operation efficiently.

Brief Description

25 The work of the International Law Division involves:

- providing advice on all aspects of public international law including the application to HKSAR of multilateral and bilateral international agreements, maritime and aviation law, consular privileges and immunities and the resolution of trade disputes;
- negotiating and advising on international agreements, including those for surrender of fugitive offenders, mutual legal assistance, transfer of sentenced persons, investment promotion and protection and air services;
- providing advice on the international legal aspects of HKSAR's laws; and
- handling requests to and from HKSAR for surrender of fugitive offenders, mutual legal assistance in criminal matters, transfer of sentenced persons and enforcement of confiscation orders and advising on matters involving international legal co-operation.

26 The key performance measures are:

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Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
number of international agreements initialled	9	4	6
briefings, negotiation and discussion (number of working sessions)	585	373	400
number of items of advice provided	6 335	8 023	6 800
number of new requests dealt with in various categories of mutual legal assistance	129	179	150
number of court appearances	28	75	60

Matters Requiring Special Attention in 2003–04

27 During 2003–04, the Division will continue to:

- provide timely and accurate advice on international law issues and on issues relating to mutual legal assistance;
- negotiate international agreements or contribute as legal advisers in these negotiations; and
- handle requests for international legal co-operation effectively.

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ANALYSIS OF FINANCIAL PROVISION

Programme	2001-02 (Actual) (\$m)	2002-03 (Approved) (\$m)	2002-03 (Revised) (\$m)	2003-04 (Estimate) (\$m)
(1) Prosecutions.....	382.0	387.4	405.9	406.6
(2) Civil	290.4	387.8	358.7	377.5
(3) Legal Policy.....	62.4	66.6	66.7	67.1
(4) Law Drafting.....	100.9	100.0	98.4	99.3
(5) International Law.....	36.4	40.0	38.2	37.9
	872.1	981.8 (+12.6%)	967.9 (-1.4%)	988.4 (+2.1%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2003-04 is \$0.7 million (0.2%) higher than the revised estimate for 2002-03. This is mainly due to the transfer of two posts for information technology support services from Information Technology Services Department in 2003-04, and an anticipated increase in the requirement for court cost payments, partly offset by a decrease in briefing out expenses and reduced operating expenditure.

Programme (2)

Provision for 2003-04 is \$18.8 million (5.2%) higher than the revised estimate for 2002-03. This is mainly due to the transfer of one professional post from Home Affairs Department and one post for information technology support services from Information Technology Services Department in 2003-04, increase in briefing out expenses and court cost payments and additional provision for employment of non-civil service contract staff.

Programme (3)

Provision for 2003-04 is \$0.4 million (0.6%) higher than the revised estimate for 2002-03. This is mainly due to the transfer of one post for information technology support services from Information Technology Services Department in 2003-04.

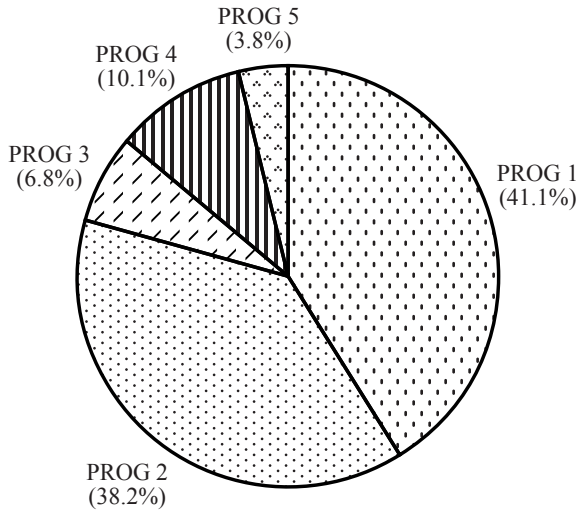
Programme (4)

Provision for 2003-04 is \$0.9 million (0.9%) higher than the revised estimate for 2002-03. This is mainly due to the transfer of one post for information technology support services from Information Technology Services Department in 2003-04 and additional provision for employment of non-civil service contract staff.

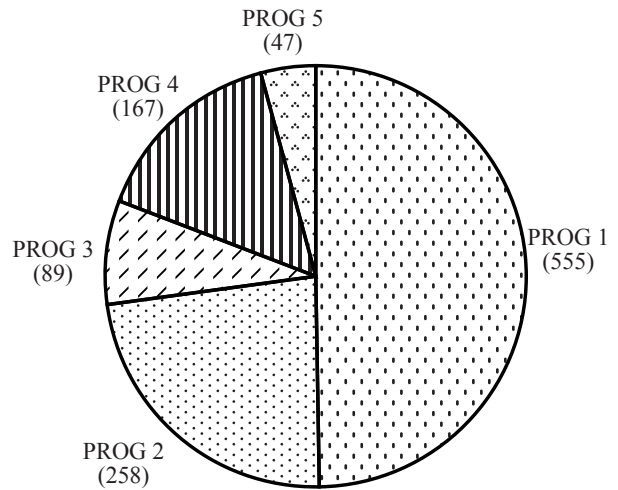
Programme (5)

Provision for 2003-04 is \$0.3 million (0.8%) lower than the revised estimate for 2002-03. This is mainly due to reduced operating expenditure.

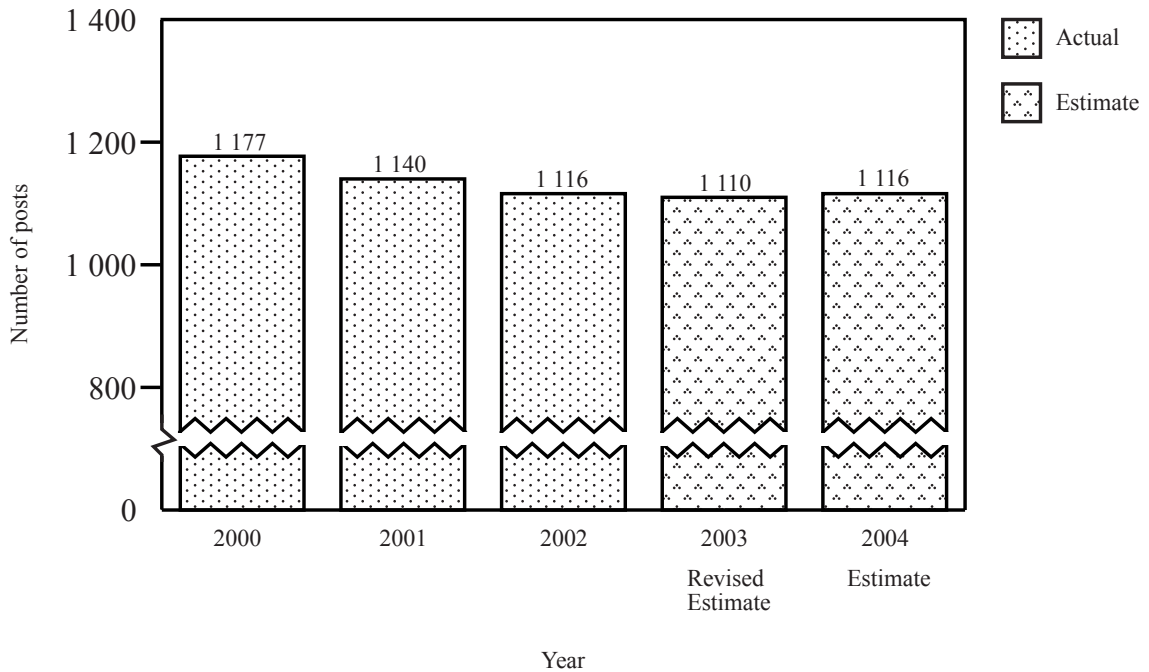
Allocation of provision to programmes (2003-04)



Staff by programme (as at 31 March 2004)



Changes in the size of the establishment (as at 31 March)



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Sub-head (Code)	Actual expenditure 2001-02	Approved estimate 2002-03	Revised estimate 2002-03	Estimate 2003-04
	\$'000	\$'000	\$'000	\$'000
Recurrent Account				
000	Operational expenses.....	—	—	887,077
234	Court costs.....	77,991	100,368	98,561*
	Salaries.....	556,907	562,118	—
	Allowances.....	7,665	9,265	—
	Job-related allowances.....	29	35	—
	Remuneration for special appointments.....	—	—	2,978
	General departmental expenses.....	60,948	85,433	—
	Hire of legal services and related professional fees.....	130,046	162,114	161,771
	Legal services for construction dispute resolution.....	36,596	58,718	58,554
	Total, Recurrent Account.....	870,182	978,051	965,104
Capital Account				
II — Other Non-Recurrent				
700	General other non-recurrent.....	1,937	3,769	2,800
	Total, Other Non-Recurrent.....	1,937	3,769	2,800
	Total, Capital Account.....	1,937	3,769	2,800
	Total Expenditure.....	872,119	981,820	967,904

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Details of Expenditure by Subhead

The estimate of the amount required in 2003–04 for the salaries and expenses of the Department of Justice is \$988,446,000. This represents an increase of \$20,542,000 over the revised estimate for 2002–03 and of \$116,327,000 over actual expenditure in 2001–02.

Recurrent Account

2 Provision of \$887,077,000 under *Subhead 000 Operational expenses* is for the salaries and allowances of staff of the Department of Justice and its other operating expenses. This includes provision of \$192,000 for a non-accountable entertainment allowance for the Secretary for Justice.

3 The establishment as at 31 March 2003 will be 1 109 permanent posts and one supernumerary post. It is expected that six permanent posts will be created in 2003–04. Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2003–04, but the notional annual mid-point salary value of all such posts must not exceed \$424,884,000.

4 An analysis of financial provision under *Subhead 000 Operational expenses* is as follows:

	2001–02 (Actual) (\$'000)	2002–03 (Original Estimate) (\$'000)	2002–03 (Revised Estimate) (\$'000)	2003–04 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	556,907	562,118	557,738	562,937
- Allowances.....	7,665	9,265	7,270	7,253
- Job-related allowances	29	35	6	6
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	—	—	—	585
Departmental Expenses				
- Remuneration for special appointments ...	—	—	2,978	3,537
- General departmental expenses.....	60,948	85,433	81,758	84,480
Other Charges				
- Hire of legal services and related professional fees	130,046	162,114	161,771	168,019
- Legal services for construction dispute resolution	36,596	58,718	58,554	60,260
	792,191	877,683	870,075	887,077

5 Provision of \$98,561,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases.

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Capital Account

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2002	Revised estimated expenditure for 2002–03	Balance
			\$'000	\$'000	\$'000	\$'000
700		<i>General other non-recurrent</i>				
	512	Hire of service for translation and Chinese typing	5,100	2,151	450	2,499
	513	Conducting mock trials in the Mainland.....	2,400	1,197	550	653
	514	Promotion of rule of law and Hong Kong's legal system.....	6,300	5,692	100	508
	515	Updating of the loose-leaf edition of the Laws of Hong Kong (adaptation amendments).....	1,900	487	—	1,413
	516	Production of publicity materials to promote the awareness of the rule of law	5,000	2,900	1,700	400
		Total.....	<u>20,700</u>	<u>12,427</u>	<u>2,800</u>	<u>5,473</u>