

立法會
Legislative Council

Ref : CB2/HS/1/07

LC Paper No. CB(2)1358/07-08
(These minutes have been seen
by the Administration)

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Minutes of the second meeting
held on Thursday, 21 February 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Kwok-ying, MH, JP
Hon Ronny TONG Ka-wah, SC
- Public Officers attending** : Item II
Judiciary Administration
Miss Vega WONG
Assistant Judiciary Administrator (Development)
- The Administration
Department of Justice
Mr Wesley WONG
Senior Assistant Law Officer (Civil Law)
- Mr K F CHENG
Senior Assistant Law Draftsman
- Clerk in attendance** : Mrs Percy MA
Chief Council Secretary (2)3
- Staff in attendance** : Miss Kitty CHENG
Assistant Legal Adviser 5
Ms Amy YU
Senior Council Secretary (2)3

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(2)1127/07-08 - Minutes of meeting on 4 February 2008)

The minutes of meeting held on 4 February 2008 were confirmed.

II. Meeting with the Administration/Judiciary Administration

(LC Paper No. CB(2)1129/07-08(01) - Paper entitled "Policy aspects of the proposed amendments to the Rules of the High Court (Cap. 4A)" provided by the Judiciary Administration

LC Paper No. CB(2)1152/07-08(01) - Paper entitled "Summary of responses to the draft Rules of the High Court (Amendment) Rules" provided by the Judiciary Administration

LC Paper No. CB(2)1000/07-08(01) - Paper entitled "Proposed Amendments to the Rules of the High Court (Cap. 4A)" provided by the Judiciary Administration (the latest draft subsidiary legislation are set out at Annexes B and C to the paper))

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. The Judiciary Administration was requested to –

- (a) review the wording of Order 1A rule 1(d) of the draft Rules of the High Court in respect of the underlying objective to “promote greater equality between the parties” having regard to members’ views;
- (b) explain how Order 1B rule 1(2)(g) (i.e. the court’s power to try two or more claims on the same occasion) worked and whether it was a new power granted to the court;
- (c) provide information on the workings of Order 1B rule 2(2) (which provided that where the Court proposed to make an order of its own motion, it might give any person likely to be affected by the order an opportunity to make representations), including whether it was a new power granted to the court, examples to illustrate the scope of “any person likely to be affected”, and who would bear the costs of the hearings;
- (d) address members' concerns/queries about imposing costs and other financial sanctions for non-compliance of practice directions and pre-action protocols, in particular the latter which were yet to be made, and provide information on how the arrangement for a party ordered by the court to pay a sum of money into the court worked (i.e. Order 2 rule 3 (2) and (4)). For details, please refer to the index of proceedings; and

Judiciary
Admin

Action

- (e) provide supplementary background information on Order 53 relating to judicial review, including information on the reasons for and the impact of the proposed changes.

III. Any other business

4. Members noted that the next meeting would be held on 29 February 2008 at 4:30 pm to meet with deputations. Members further agreed to invite faculty members of the three law schools of local universities to give views on the draft subsidiary legislation at the meeting.

5. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
18 March 2008

**Proceedings of the second meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Thursday, 21 February 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000142 - 000235	Chairman	Confirmation of minutes of meeting on 4 February 2008 (LC paper No. CB(2)1127/07-08)	
000236 - 000545	Chairman	<p>The Chairman informed members of her discussion with the Chief Justice on members' concern that there should be appropriate representatives from the Judiciary attending meetings of the Subcommittee to answer members' questions on the policy aspects of the draft subsidiary legislation -</p> <p>(a) the Judiciary was of the position that judges should not appear before LegCo committees;</p> <p>(b) in light of (a) above, the Judiciary Administration would act as the bridge between the Judiciary and the Subcommittee and relay the views of the Judiciary in writing to the Subcommittee; and</p> <p>(c) at the request of the Chairman, the Judiciary Administration had provided a paper entitled "Policy aspects of the proposed amendments to the Rules of the High Court (Cap. 4A)" (LC Paper No. CB(2)1129/07-08(01)) to explain the policy objectives of the proposed amendments and their impact on civil proceedings</p>	
000546 - 000813	Chairman	To facilitate the Subcommittee's deliberation of the draft amendments to the Rules of the High Court (RHC), the Clerk was requested to prepare an index showing the headings of the various parts of the proposed amendments to RHC together with the relevant RHC Orders affected	Clerk to follow up
000814 - 002229	Chairman Judiciary Administration	Briefing by the Judiciary Administration on its paper entitled "Policy aspects of the proposed amendments to the Rules of the High Court (Cap. 4A)" (LC Paper No. CB(2)1129/07-08(01))	

Time Marker	Speaker(s)	Subject(s)	Action required
002230 - 003310	Chairman Judiciary Administration Administration	<p>The Chairman pointed out that some legal practitioners had expressed concern that overemphasizing the objective to increase the cost-efficiency of court procedures might result in injustice to the parties in some cases</p> <p>The Judiciary Administration/Administration's response that while one of the underlying objectives of the proposed amendments to RHC was to deal with a case as expeditiously as reasonably practicable, the court should always recognize that the primary aim in exercising its power was to secure the just resolution of the parties' dispute, as enshrined in Order 1A rule2(2)</p> <p>In response to the Chairman's request, the Judiciary Administration agreed to provide supplementary background information on Order 53 of the draft RHC relating to judicial review, including information on the reasons for and the impact of the proposed changes</p>	Judiciary Administration to follow up
003311 - 003438	Chairman Judiciary Administration	<p><u>Part 1 - Preliminary</u></p> <p>In response to the Chairman, the Judiciary Administration advised that the target commencement date of the RHC (Amendment) Rules 2008 was April 2009</p>	
003439 - 003616	Chairman Judiciary Administration	<p><u>Part 2 - Objectives and case management powers (New Orders 1A and 1B)</u></p> <p>Briefing by the Judiciary Administration</p>	
003617 - 004829	Ms Miriam LAU Chairman Judiciary Administration Administration Mr Ronny TONG	<p><i>New Order 1A - Objectives</i></p> <p>Discussions on the underlying objective "to promote greater equality between the parties" (Order 1A rule 1(d))</p> <p>The Administration/Judiciary Administration's response that the rule setting out the underlying objectives of the civil justice system served as a declaratory statement of the legitimate aims of judicial case management which would be taken into account by the court in exercising its powers provided under RHC</p> <p>Mr Ronny TONG's view that "equality of arms" was a more appropriate term to use than "equality" and his suggestion that rule 1(d) be re-phrased as "to promote as much as is reasonably practicable equality of arms between the parties"</p> <p>The Judiciary Administration agreed to review the wording of rule 1(d) in the light of members' views</p>	Judiciary Administration to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
004830 - 005235	Chairman Mr Ronny TONG Judiciary Administration Administration	<p>The Chairman’s view that, in furtherance of the objective to promote greater equality between the parties, there should be provisions in the rules empowering the court to order a party to apply for legal aid, having regard to the fact that difference in financial position was one of the greatest inequality between parties</p> <p>Judiciary Administration’s response that in the draft subsidiary legislation there was no provision empowering the court to order a party to apply for legal aid. The provision of legal aid was separately provided for under the Legal Aid Ordinance. As the Final Report on CJR did not contain any recommendation relating to the court’s power to order legal aid, this was outside the remit of the Steering Committee on CJR</p>	
005236 - 005354	Ms Miriam LAU Chairman Mr Ronny TONG	Ms Miriam LAU pointed out that the wording of the objectives stated in rule 1(d) mirrored those used in paragraph 55 of the Final Report	
005355 - 005800	Mr LI Kwok-ying Administration Chairman	Mr LI Kwok-ying’s view that rule 1(d) was unnecessary and should be deleted altogether as it gave the impression that there was much inequalities in the current civil justice system	
005801 - 005954	Chairman Judiciary Administration	Order 1A rule 3 – Duty of the parties and their legal representatives to further the underlying objectives of the rules	
005955 - 010211	Chairman Judiciary Administration	<p><i>New Order 1B – Case management powers of the court</i></p> <p>Briefing by the Judiciary Administration</p>	
010212 - 010601	Chairman Administration	The Judiciary Administration was requested to explain in writing how Order 1B rule 1(2)(g) (i.e. the court’s power to try two or more claims on the same occasion) worked and whether it was a new power granted to the court	Judiciary Administration to follow up
010602 - 011242	Mr LI Kwok-ying Chairman Administration	<p>The Judiciary Administration was requested to provide in writing the following information concerning Order 1B rule 2(2) (which provided that where the Court proposed to make an order of its own motion, it might give any person likely to be affected by the order an opportunity to make representations) –</p> <p>(a) whether it was a new power granted to the court;</p> <p>(b) examples to illustrate the scope of “any person likely to be affected”; and</p> <p>(c) who would bear the costs of the hearings</p>	Judiciary Administration to follow up

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Mr LI KWOK-ying's enquiry on whether the "3 days" referred to in Order 1B rule 2(3)(b) were working or calendar days</p> <p>The Administration's clarification that –</p> <ul style="list-style-type: none"> (a) where the period in question was a period of seven days or less, Sundays and public holidays were excluded in the calculation of time limits; and (b) where the period in question was a period of more than seven days, Sundays and public holidays were included in the calculation of time limits 	
011243 - 011639	<p>Chairman Judiciary Administration Mr Ronny TONG</p>	<p><u>Part 3 – Pre-action protocols and cost-only proceedings</u> (Orders 1,2,10,11,12 and 62)</p> <p><i>Order 1 – Definition of practice direction and pre-action protocol</i></p> <p>Briefing by the Judiciary Administration</p> <p>The Judiciary Administration's response that -</p> <ul style="list-style-type: none"> (a) taking into account the consultation response to the Interim Report, and the experience in the United Kingdom (UK), that pre-action protocols would result in the "front-loading" of costs, the Working Party on CJR had recommended in its Final Report that pre-action protocols should not be prescribed for cases across the board and would only apply to certain specialist lists after due consultation with all relevant parties, including the two legal professional bodies; and (b) no pre-action protocols had yet been promulgated 	
011640 - 012714	<p>Chairman Mr Ronny TONG Ms Miriam LAU Administration</p>	<p><i>Order 2 –Effect of non-compliance with pre-action protocols and practice direction</i></p> <p>In response to Ms Miriam LAU's enquiry, the Administration's advice that in cases of non-compliance with pre-action protocols or practice direction, the Court was empowered to –</p> <ul style="list-style-type: none"> (a) order a party to pay a sum of money into court, such sum becoming security for any sum payable by that party to any other party in the proceedings (Order 2 rule 3(2)); and 	

Time Marker	Speaker(s)	Subject(s)	Action required
		(b) take into account the extent to which the parties followed any relevant pre-action protocol in exercising its discretion as to costs (Order 62 Rule 5(2)(d))	
012715 - 015827	Ms Miriam LAU Administration Chairman Mr Ronny TONG Judiciary Administration	<p>Members expressed concern about imposing costs and other financial sanctions for non-compliance of practice directions and pre-action protocols, in particular the latter which were yet to be made, as proposed in Order 2. Other concerns/queries expressed by members included -</p> <ul style="list-style-type: none"> (a) the sanction of payment into court was unfair to the defendant as the nature of the payment was such that it would in most cases apply to the defendant but not the plaintiff; (b) unlike its counterpart in UK's Civil Procedure Rules, there was no provision for sanction in respect of interest; (c) the impact of the introduction of pre-action protocols and the proposed sanctions for non-compliance of pre-action protocols and practice direction on unrepresented litigants; and (d) whether it would be unfair to the party who was legally represented if unrepresented litigants were given special consideration in application for relief from sanctions for non-compliance of pre-action protocols or practice directions as provided under Order 2 rule 5(1)(g) <p>The Judiciary Administration was requested to address members concerns in writing and to provide supplementary information on how the arrangement for a party ordered by the court to pay a sum of money into the court worked (Order 2 rule 3 (2) and (4))</p>	Judiciary Administration to follow up
015828 - 020031	Chairman	<p>Date of next meeting</p> <p>Invitation of faculty members of law schools of local universities to give views on the draft subsidiary legislation</p>	