

**立法會**  
**Legislative Council**

Ref : CB2/HS/1/07

LC Paper No. CB(2)1579/07-08  
(These minutes have been seen  
by the Administration)

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

**Minutes of the fourth meeting  
held on Wednesday, 26 March 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 Ronny TONG Ka-wah, SC
- Member absent** : Hon LI Kwok-ying, MH, JP
- 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 meetings**

(LC Paper No. CB(2)1358/07-08 - Minutes of meeting on 21 February 2008

LC Paper No. CB(2)1359/07-08 - Minutes of meeting on 29 February 2008)

The minutes of meetings held on 21 and 29 February 2008 were confirmed.

**II. Meeting with the Administration/Judiciary Administration**

(LC Paper No. CB(2)1361/07-08(01) - Paper entitled "Revised proposal for amendments to Order 53 - Applications for judicial review"

LC Paper No. CB(2)1361/07-08(02) - Paper entitled "Assistance to unrepresented litigants"

LC Paper No. CB(2)1373/07-08(01) - Paper entitled "Response to issues raised at the Subcommittee meeting on 21 February 2008"

LC Paper No. CB(2)1373/07-08(02) - Paper entitled "Response to submissions on the proposed amendments to the Rules of the High Court (Cap. 4A)"

LC Paper No. CB(2)1327/07-08(01) - Submission from Consumer Council

LC Paper No. CB(2)1392/07-08(01) - Further submission dated 18 March 2008 from the Law Society of Hong Kong on a number of issues raised at the meeting on 29 February 2008

LC Paper No. CB(2)1411/07-08(01) - Further submission dated 19 March 2008 from Mr Gary Meggitt on a number of issues raised at the meeting on 29 February 2008

LC Paper No. CB(2)1403/07-08(01) - Further submission dated 19 March 2008 from Mr Eric CHEUNG Tat-ming in the light of the Judiciary Administration's revised proposals and response to the views of deputations expressed at the meeting on 29 February 2008

LC Paper No. CB(2)1422/07-08(01) - Further submission dated 20 March 2008 from Mr Gary Meggitt in the light of the Judiciary Administration's response to the views of deputations expressed at the meeting on 29 February 2008

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

Action

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**).

Proposed amendments to draft subsidiary legislation

3. Members noted that having regard to the views of the Subcommittee and the deputations, the Judiciary had proposed to –
  - (a) amend Order 1A rule 1(d) to read "to ensure fairness between the parties";
  - (b) leave out references to "pre-action protocol" and "practice direction" in Order 2 rules 3 to 5 concerning sanctions for non-compliance for the time being; and
  - (c) remove the proposed amendments in Order 53 rule 2B requiring the service of application of leave for judicial review on the respondent and all interested parties.

Judiciary  
Admin

Members supported the above proposed amendments. The Judiciary Administration would provide the amended version of the relevant rules for members' consideration in due course.

Implementation schedule for the Civil Justice Reform (CJR)

4. The Judiciary Administration advised that it was the intention of the Judiciary to bring the relevant legislation, both primary and subsidiary legislation, into force in April 2009 in one go. Members expressed concern about whether there would be sufficient time for the Judiciary and the legal profession to undertake the necessary preparation and training for the implementation of CJR, in view of the substantial changes involved. Ms Miriam LAU suggested that consideration should be given to implementing the legislative changes by phases to allow more time for the legal practitioners to familiarize themselves with the revised or new rules. The Judiciary Administration was requested to relay members' concerns to the Judiciary and provide a written response on the feasibility of implementing the legislative amendments by phases.

Judiciary  
Admin

5. The Judiciary Administration was also requested to provide information on the Judiciary's plan/training programmes to prepare judges and support staff for the implementation of CJR. Members agreed that the two legal professional bodies would also be invited to provide the same information in relation to legal practitioners.

Judiciary  
Admin/  
Clerk

Action

Resource Centre for Unrepresented Litigants (the Resource Centre)

6. Members were of the view that the services of the Resource Centre should be enhanced to better meet the needs of unrepresented litigants, for instance by organizing classes on court procedures and legal knowledge for unrepresented litigants and uploading frequently asked questions onto its website. The Judiciary Administration informed members that the Resource Centre could not provide legal advice when rendering assistance to unrepresented litigants, having regard to the fundamental principle that the Judiciary must be and must be seen to be fair and impartial in adjudicating disputes. It undertook to relay members' views to the Judiciary for consideration.

Judiciary  
Admin

7. The Clerk was requested to refer the issue of the services of the Resource Centre to the Panel on Administration of Justice and Legal Services for consideration of follow up.

Clerk

**III. Any other business**

8. Members considered it unnecessary to hold a further meeting with deputations at this stage and agreed to cancel the meeting on Saturday, 29 March 2008 at 9:00 am originally scheduled for meeting with deputations.

9. Members agreed that additional meetings be scheduled to continue discussion on the draft subsidiary legislation.

10. The meeting ended at 4:14 pm.

Council Business Division 2  
Legislative Council Secretariat  
11 April 2008

**Proceedings of the fourth meeting of the  
Subcommittee on Draft Subsidiary Legislation  
Relating to the Civil Justice Reform  
on Wednesday, 26 March 2008, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000351 - 000421	Chairman	Confirmation of minutes of meetings	
000422 - 000658	Chairman Ms Miriam LAU	Cancellation of the meeting on 29 March 2008	
000659 - 001202	Chairman Judiciary Administration	Briefing by the Judiciary Administration (JA) on its revised proposals for amendments to Order 53 (Judicial review) [LC Paper No. CB(2)1361/07-08(01)]	
001203 - 001315	Chairman	The query raised by the Law Society of Hong Kong in its further submission dated 18 March 2008 [LC Paper No. CB(2)1392/07-08(01)] on Order 53, rule 2B(b) requiring an applicant to serve the notice of application of leave for judicial review not only on the intended respondent but also on any interested party	
001316 - 002523	Mr James TO Chairman Administration Ms Miriam LAU Mr Ronny TONG	Scope of "interested party" in Order 53 rule 2B(b)  Members agreed with the Steering Committee's proposal to remove the proposed amendments requiring the service of application of leave for judicial review on the respondent and all interested parties (Order 53 rule 2B). JA would provide the amended version of the relevant rules for members' consideration in due course	<b>JA to follow up</b>
002524 - 003417	Judiciary Administration Chairman Mr Ronny TONG	Briefing by JA on its paper entitled "Assistance to Unrepresented Litigants" [LC Paper No. CB(2)1361/07-08(02)]  Members' views that -  (a) JA's paper failed to address their concerns on the impact of the proposed changes on unrepresented litigants, in particular whether unrepresented litigants were able to comply with the new rules; and  (b) some of the changes brought about by CJR, e.g. more extensive use of applications on paper without a hearing, would add to the difficulties faced by unrepresented litigants in civil litigation	

Time Marker	Speaker(s)	Subject(s)	Action required
003418 - 005334	Ms Miriam LAU Judiciary Administration Chairman Mr Ronny TONG	<p>Discussion on the services provided by the Resource Centre for Unrepresented Litigants (the Resource Centre)</p> <p>JA's response that it had conducted a user satisfaction survey to gauge the feedback of users of the Resource Centre in 2005 and had provided a paper on the findings of the survey to the Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007 [LC Paper No. CB(2)1995/06-07(02)]. JA would provide update information, if any, on the frequently asked questions raised by users of the Resource Centre</p> <p>Members' view that the services of the Resource Centre should be enhanced to better meet the needs of unrepresented litigants, for instance by organizing classes on court procedures and legal knowledge for unrepresented litigants and uploading frequently asked questions onto its website. JA's response that the Resource Centre could not provide legal advice when rendering assistance to unrepresented litigants, having regard to the fundamental principle that the Judiciary must be and must be seen to be fair and impartial in adjudicating disputes. It would relay members' views to the Judiciary for consideration</p> <p>The Chairman requested the Clerk to refer the issue of the services of the Resource Centre to the Panel on Administration of Justice and Legal Services for consideration of follow up</p>	<p><b>JA to follow up</b></p> <p><b>Clerk to follow up</b></p>
005335 - 005631	Chairman Judiciary Administration	<p>The Chairman's enquiry on the publicity plan for the implementation of the Civil Justice Reform (CJR)</p> <p>JA's response that it would produce explanatory materials on the revised or new court procedures, which would be made available in the Resource Centre. The pamphlets would also be distributed to the relevant non-governmental organizations through, for example, the Hong Kong Council on Social Service</p>	
005632 - 010706	Chairman Judiciary Administration Ms Miriam LAU Mr Ronny TONG	<p>Briefing by the Judiciary Administration on its paper entitled "Response to Issues Raised at the Subcommittee meeting on 21 February 2008" [LC Paper No. CB(2)1373/07-08(01)]</p> <p>Members agreed with the following amendments proposed by the Judiciary -</p> <p>(a) to amend Order 1A rule 1(d) to read "to ensure fairness between the parties"; and</p>	<p><b>JA to follow up</b></p>

Time Marker	Speaker(s)	Subject(s)	Action required
		(b) to leave out references to "pre-action protocol" and "practice direction" in Order 2 rules 3 to 5 concerning sanctions for non-compliance for the time being	
010707 - 012249	Ms Miriam LAU Administration Chairman ALA5 Judiciary Administration	Discussion on the arrangement of payment into court  Administration/JA's response that -  (a) under the existing arrangements, non-compliance with rules and court orders in the course of proceedings could only be penalized by cost sanctions at the conclusion of the proceedings. To enhance the court's case management powers, the proposed amendments would give the court a general power to order payment at any stage of the proceedings as an appropriate sanction; and  (b) the amount of payment into court was a matter of judicial decision, having regard to the criteria listed in Order 2 rule 3(3) and the circumstances of individual cases	
012250 - 012634	Chairman Judiciary Administration	Briefing by JA on its paper entitled "Response to submissions on the proposed amendments to the Rules of the High Court (Cap. 4A) [LC Paper No. CB(2)1373/07-08(02)]"	
012635 - 013406	Ms Miriam LAU Chairman Judiciary Administration	In response to Ms Miriam LAU's enquiry on the target implementation schedule for the draft subsidiary legislation, the Administration's reply that -  (a) it was the Judiciary's target to have the proposed subsidiary legislation relating to CJR enacted before the end of the current term of the Legislative Council in the summer of 2008;  (b) in late 2008 and early 2009, the Judiciary would conduct training for judges and supporting staff to prepare them for the implementation of CJR; and  (c) after training and other necessary preparation, the Judiciary intended to bring the relevant legislation, both primary and subsidiary legislation, into force in April 2009 in one go.  The Chairman and Ms Miriam LAU expressed concern whether there would be sufficient time for the Judiciary and the legal profession to undertake the necessary preparation and training for the implementation of CJR	

Time Marker	Speaker(s)	Subject(s)	Action required
		Ms Miriam LAU's view that consideration should be given to implementing the reform by phases rather than in one go, given that the reform involved substantial changes to the existing civil procedures	
013407 - 013514	Chairman Judiciary Administration	JA's response to the views of deputations on Order 1B (Case management powers) and Order 2 (Effect of non-compliance) [LC Paper No. CB(2)1373/07-08(02)]	
013515 - 014247	Chairman Ms Miriam LAU	<p>JA was requested to provide information on the Judiciary's plan/training programmes to prepare judges and supporting staff for the implementation of CJR. The two legal professional bodies would also be invited to provide the same information in relation to legal practitioners</p> <p>JA was requested to relay members' concerns about the target implementation schedule to the Judiciary and provide a written response on the feasibility of implementing the legislative amendments by phases</p>	<p><b>JA and Clerk to follow up</b></p> <p><b>JA to follow up</b></p>
014248 - 014338	Chairman	Scheduling of additional meetings	