

立法會
Legislative Council

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LC Paper No. CB(2)2683/07-08
(These minutes have been seen
by the Administration)

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

**Minutes of the 12th meeting
held on Thursday, 15 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, 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 meeting

(LC Paper No. CB(2)1926/07-08 - Minutes of meeting on 14 April 2008)

The minutes of meeting held on 14 April 2008 were confirmed.

II. Meeting with the Administration/Judiciary Administration

(LC Paper No. CB(2)1847/07-08(01) - Paper setting out the relevant rules under Part 25 of the Draft High Court (Amendment) Rules 2008 provided by the Judiciary Administration

LC Paper No. CB(2)1928/07-08(01) - A check-list of follow-up actions required of the Judiciary Administration/Administration (as at 8 May 2008)

LC Paper No. CB(2)1847/07-08(03) - Paper entitled "Revised Part 23 - Judicial Review" provided by the Judiciary Administration

LC Paper No. CB(2)1890/07-08(01) - Letter dated 10 April 2008 from Assistant Legal Adviser to the Judiciary Administration

LC Paper No. CB(2)1847/07-08(04) - Paper entitled "Response to issues raised at previous Subcommittee meetings" provided by the Judiciary Administration

LC Paper No. CB(2)1928/07-08(02) - Paper entitled "Response to remaining issues raised at previous Subcommittee meetings" provided by the Judiciary Administration

LC Paper No. CB(2)1928/07-08(03) - Paper entitled "Appeals to the Court of Appeal Re : totally unmeritorious leave applications" provided by the Judiciary Administration

LC Paper No. CB(2)1000/07-08(01) - Paper entitled "Proposed amendments to RHC (Cap. 4A)" together with the following Annexes -

Annex A - a summary table setting out the RHC Orders affected and the relevant Amendment Rules in the Draft RHC

Annex B - the Draft RHC

Annex C - the marked-up version of the provisions affected by the amendments in the Draft RHC)

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

3. The Judiciary Administration was requested to –

Part 4 – Commencement of Proceedings

(a) clarify whether there were express provisions in the rules on the procedural steps involved for cases commenced by originating

Action

summons, and whether it was expressly provided that such procedural steps as pleadings, discovery, witness statements, etc. were avoided as unnecessary where an originating summons was issued to determine a question of law or construction in an uncontroversial factual context;

Part 23 –Judicial Review

- (b) provide a workflow of the procedures involved for applications for judicial review under the revised Order 53 (e.g. what would happen if it had come to the applicant or the court's attention at a late stage that there was an interested party who should be served; the possible courses of actions which could be taken by an interested party who had or had not been named in the application; how costs were to be determined for proceedings involving interested parties, etc.), and clarify whether such procedures had been provided for in the rules; and

Transitional provisions

- (c) confirm whether there would be conflicts among the different transitional provisions in different parts of the rules, and clarify whether the court had jurisdiction to deal with such situations.

Clerk

4. Members agreed to refer the issue of the long lead time required for the perfection of an order to the Panel on Administration of Justice and Legal Services for follow up. The Judiciary Administration was requested to include in its discussion paper to the Panel on the subject information on the time generally required for the perfection of an order.

III. Any other business

5. The Chairman reminded members that the next meeting would be held on Friday, 16 May 2008 at 10:45 am.

6. The meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
23 July 2008

**Proceedings of the 12th meeting of the
Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform
on Thursday, 15 May 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000006 - 000033	Chairman	Confirmation of minutes	
000034 - 000121	Chairman	Legal adviser's confirmation that Part 25 (Miscellaneous) of the draft amendments to the Rules of the High Court (draft RHC) was in order	
000122 - 000338	Chairman Judiciary Administration	<u>Revised Part 23</u> Scrutiny of the revised amendments to Part 23 of draft RHC [Judiciary Administration (JA)'s paper entitled "Revised Part 23 - Judicial Review" (LC Paper No. CB(2)1847/07-08(03) - Annex B)]	
000339 - 000449	Chairman	rule 1A	
000450 - 000537	Chairman	rule 1	
000538 - 000626	Chairman Judiciary Administration	rule 3	
000627 - 000710	Chairman	rule 4A	
000711 - 000811	Chairman Judiciary Administration	rule 5	
000812 - 000828	Chairman	rule 5A	
000829 - 000906	Chairman	rule 5B	
000907 - 000939	Chairman	rule 6	
000940 - 001009	Chairman Judiciary Administration	rule 9	
001010 - 001028	Chairman	rule 15	
001029 - 001405	Chairman Judiciary Administration	<u>JA's response to issues raised at previous Subcommittee meetings</u> (LC Paper No. CB(2)1847/07-08(04))	
001406 - 001452	Chairman ALA5 Ms Miriam LAU	<i>Part 1 - Preliminary</i> Section A (paras 2 to 4) - Response to legal adviser's letter dated 10 April 2008	

Time Marker	Speaker(s)	Subject(s)	Action required
001453 - 001505	Chairman	<p><i>Part 4 - Commencement of Proceedings</i></p> <p>Section B (para 5) - - Reference to "Crown" in Order 77</p>	
001506 - 002143	<p>Mr James TO Judiciary Administration Administration Chairman</p>	<p><i>Transitional provisions</i></p> <p>JA was requested to confirm whether there would be conflicts among the different transitional provisions in different parts of the rules, and clarify whether the court had jurisdiction to deal with such situations</p>	JA to follow up
002144 - 002544	<p>Chairman Mr James TO Mr Ronny TONG Judiciary Administration</p>	<p>Section C (para 6) - Impact of the proposed abolition of originating motions</p> <p>JA was requested to clarify whether there were express provisions in the rules on the procedural steps involved for cases commenced by originating summonses, and whether it was expressly provided that such procedural steps as pleadings, discovery, witness statements, etc. were avoided as unnecessary where an originating summons was issued to determine a question of law or construction in an uncontroversial factual context</p>	JA to follow up
002545 - 003329	<p>Chairman Ms Miriam LAU Judiciary Administration</p>	<p><i>Part 6 - Default judgments and admissions</i></p> <p>Section D (paras 7 and 8) - Procedure for making an admission to a money claim and requesting time to pay</p> <p>The Chairman and Ms Miriam LAU reiterated their reservations about requiring a defendant in a money claim who admitted liability and requested time to pay to furnish detailed information on his means once he made a proposal on payment terms</p>	
003330 - 003407	<p>Chairman Judiciary Administration</p>	<p>Section E (para 9) - Explanatory Notes in Form No.16</p>	
003408 - 004609	<p>Chairman Judiciary Administration Mr Ronny TONG Administration Ms Miriam LAU</p>	<p>Section F (paras 10 and 11) - Determination of payment terms by the Court in the new Order 13A rule 10</p>	
004610 - 004626	Chairman	<p>Section G (para 12) - The use of the word "denial" in Order 18 rule 13(5)</p>	
004627 - 004646	Chairman	<p><i>Part 7 - Pleadings</i></p> <p>Section H (para 13) - Whether pleadings included statements of claim</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
004647 - 004705	Chairman	Section I (para 14) - The requirement that pleading should be verified by a statement of truth	
004706 - 005438	Chairman Ms Miriam LAU Judiciary Administration Mr Ronny TONG Administration	Section J (para 15) - Consequences for a legal representative for failure to comply with Order 41A rule 4(3)(a)-(c)	
005439 - 005505	Chairman	Section K (para 16) - Whether a statement of truth could be filed separately from the pleading that it verified	
005506 - 005522	Chairman	<i>Part 8 - Sanctioned offers and payments</i> Section L (para 17) - Penalties for breach of Order 22 rule 21(2)	
005523 - 005535	Chairman	Section M (para 18) - How partial settlement would operate	
005536 - 005654	Chairman Judiciary Administration Administration	Section N (para 19) - Criteria for determining whether a judgment was better than the sanctioned offer or payment	
005655 - 005717	Chairman	Section O (para 20) - Drawing the attention of unrepresented litigants to Order 62 rule 5	
005718 - 005938	Chairman Judiciary Administration	Section P (para 21) - Order 22 rule 23(2)	
005939 - 010022	Chairman Judiciary Administration	Section Q (para 22) - The need for prescribing a standard form for giving notice under Order 22 rule 23(2)(a)	
010023 - 010104	Chairman	<u>JA's response to remaining issues raised at previous Subcommittee meetings</u> (LC Paper No. CB(2)1928/07-08(02))	
010105 - 010157	Judiciary Administration	<i>Part 4 - Commencement of proceedings</i> Section A (para 2) - The form to be used for commencing proceedings under Order 118 rule 4(1)	
010158 - 010325	Chairman Judiciary Administration	<i>Part 8 - Sanctioned offers and payments</i> Section B (para 3) - Whether a plaintiff could make a sanctioned offer to one or more, but not all defendants where the defendants were sued jointly	

Time Marker	Speaker(s)	Subject(s)	Action required
010326 - 010103	Chairman Judiciary Administration	<i>Part 10 - Case management, timetabling and milestones</i> Section C (para 4) - Questionnaire on case management	
010404 - 010536	Chairman Judiciary Administration	Section D (paras 5 and 6) - Threshold for granting applications for variation of milestone dates	
010537 - 011622	Chairman Judiciary Administration Administration Mr Ronny TONG	<i>Part 11 - Vexatious litigants</i> Section E (paras 7 to 9) - Mode for commencing proceedings for applications for vexatious litigant orders	
011623 - 011646	Chairman Judiciary Administration	<i>Part 14 - Summary assessment of costs of interlocutory applications</i> Section F (para 10) Whether "the Court" in Order 62 rule 9A(4) and (5) referred to the taxing master	
011647 - 011659	Chairman Judiciary Administration	Section G (para 11) - The need for the phrase "aggrieved by the Order" in Order 62 rule 9A(2)	
011700 - 011727	Chairman Judiciary Administration	<i>Part 15 - Wasted costs</i> Section H (para 12) - Scope of "legal representative" as defined in Order 62 rule 1(1)	
011728 - 011825	Chairman Judiciary Administration	Section I (para 13) - Sanctions for breach of Order 62 rule 8C	
011826 - 011933	Chairman Judiciary Administration Ms Miriam LAU	<i>Part 16 - Witness statements and evidence</i> Section J (para 14) - Order 38 rule 2A(7)(b)	
011934 - 012310	Chairman Judiciary Administration Ms Miriam LAU Administration	<i>Part 17 - Expert Evidence</i> Part K (paras 15 and 16) - Circumstances under which the court might make an order for a single joint expert	
012311 - 012359	Chairman Judiciary Administration	Section L (para 17) - Operation of Order 38 rule 4A(6)	
012400 - 012418	Chairman Judiciary Administration	<i>Part 19 - Leave to appeal</i> Part M (para 18) - Order 59 rule 2A(8)	
012419 - 013444	Chairman Judiciary Administration Ms Miriam LAU	Part N (para 19) and Part O (para 20) - Proposed amendments on the calculation of time for making an application for leave to appeal or appeal	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>Ms Miriam LAU reiterated her concern that the proposed amendment on calculating time for making an application for leave to appeal or appeal from the date of judgment, rather than the date of perfection of an order as at present, might shorten the time for making an application for appeal/leave to appeal, given that there was often a significant time lag between the date of the order and that of perfection of the order</p> <p>Members agreed to refer the issue of the long lead time required for the perfection of an order to the Panel on Administration of Justice and Legal Services for follow up. JA was requested to include in its discussion paper to the Panel on the subject information on the time generally required for the perfection of an order</p>	<p>Clerk to follow up</p>
013445 - 013809	<p>Chairman Judiciary Administration Ms Miriam LAU</p>	<p><i>Part 22 - Taxing the other side's costs</i></p> <p>Section P (para 21) - Explanations for proposed revisions to scale of costs and fixed costs in the Schedules of Order 62</p>	
013810 - 014512	<p>Chairman Ms Miriam LAU Judiciary Administration Administration</p>	<p><i>Revised Part 23 - Judicial Review</i></p> <p>Section Q (paras 22 and 23) - Consequences if an applicant failed to identify all the interested parties in an application for leave for judicial review</p>	
014513 - 014822	<p>Chairman Ms Miriam LAU</p>	<p>Rule 4A(2) of the revised Part 23 [LC Paper No. CB(2)1847/07-08(03) - Annex B]</p> <p>The Chairman's enquiry on the consequences if the applicant found out only at a late stage that there was an interested party who should be served and had consequently failed to comply with Order 53 rule 4A(2) requiring the service of an order granting leave to all interested parties within 14 days</p>	
014823 - 015131	<p>Ms Miriam LAU Chairman Administration</p>	<p>Revised Order 53 rule 6 - Actions to be taken by interested parties</p>	
015132 - 015924	<p>Chairman Ms Miriam LAU Administration Judiciary Administration</p>	<p>JA was requested to provide a workflow of the procedures involved for applications for judicial review under the revised Order 53 (e.g. what would happen if it had come to the applicant or the court's attention at a late stage that there was an interested party who should be served; the possible courses of actions which could be taken by an interested party who had or had not been named in the application; how costs were to be determined for proceedings involving interested parties, etc.), and clarify whether such procedures had been provided for in the rules</p>	<p>JA to follow up</p>

Time Marker	Speaker(s)	Subject(s)	Action required
015925 - 020116	Chairman Judiciary Administration	Section R (para 24) - Costs consequences on the applicant if an interested party named in the application form turned out to be not truly an "interested party"	
020117 - 020558	Chairman Ms Miriam LAU Judiciary Administration Administration	Closing Remarks Date of next meeting	

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23 July 2008