

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

**A check-list of follow-up actions required of
the Judiciary Administration and the Administration
(Position as at 8 May 2008)**

| Subject | Date of meeting | Follow-up actions required | Judiciary Administration / Administration's response |
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| Draft Rules of the High Court (Amendments) 2008 (Draft RHC) | | | |
| Part 1 – Preliminary | N/A | Provide a response to legal adviser's letter dated 10 April 2008 concerning the provision on the commencement of the Draft RHC. The Judiciary Administration was requested to consider revising the Draft RHC to give a separate commencement notice provision to the Draft RHC in the form of a usual subsidiary legislation | LC Paper No. CB(2)1847/07-08(04) |
| Part 2 – Objectives and Case Management Powers | 21 February 2008 | (a) Review the wording of Order 1A rule 1(d) of the Draft RHC in respect of the underlying objective to “promote greater equality between the parties”; (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) works and whether it is a new power granted to the court; and (c) provide information on the workings of Order 1B rule 2(2) (which provides that where the Court proposes to make an order of its own motion, it may give any person likely to be affected by the order an opportunity to make representations), including whether it is a new power granted to the court, examples to illustrate the scope of “any person likely to be affected”, and who will bear the costs of the hearings | LC Paper No. CB(2)1373/07-08(01) Order 1A rule 1(d) will be revised to read "to ensure fairness between the parties" |

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| Part 3 – Pre-action Protocols and Costs-only Proceedings | 21 February 2008 | (a) Address members' concerns/queries about imposing costs and other financial sanctions for non-compliance of practice directions and pre-action protocols; and (b) provide information on how the arrangement for a party ordered to pay a sum of money into the court works (i.e. Order 2 rule 3 (2) and (4)) | LC Paper No. CB(2)1373/07-08(01) Revisions will be made to the proposed amendments to Order 2 to exclude the application of the proposed sanctions from pre-action protocol and practice direction |
| Part 4 – Commencement of proceedings | 8 April 2008 | (a) Consider whether the reference to a specific amendment rule/part of amendment rules should be deleted from the transitional provisions such as Order 5 rule 7 and Order 8 rule 6, in view of the Judiciary's plan to implement all the legislative amendments in one go; (b) explain in writing why opportunity is not taken to amend the references to "Crown" in Order 77 in the current legislative exercise, the timeframe for making such amendments, and the interpretation of the word "Crown" before such amendments were made; (c) explain in writing the impact of the proposed abolition of originating motions, which currently can be used for starting proceedings requiring fast-track procedures; and (d) clarify the form to be used for commencing proceedings under Order 118 rule 4(1), having regard to the fact that Form No. 11 is expressly mentioned in Order 119 rule 4 but not in Order 118 rule 4(1), both of which are ex parte proceedings | LC Paper No. CB(2)1847/07-08(04) Response is awaited for item (d) |
| Part 6 – Default judgments and admissions (LC Paper No. CB(2)1581/07-08 (01)) | 8 April 2008 | Explain in writing the procedure under the new Order 13A (Admissions in claims for payment of money) and the relevant forms to be used in the process | LC Paper No. CB(2)1581/07-08(01) |
| | 14 April 2008 | (a) Consider modifying the proposed procedure for making an admission to a money claim | LC Paper No. CB(2)1847/07-08(04) |

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| | | <p>and requesting time to pay into a two-stage process, as follows -</p> <p><u>1st stage</u></p> <ul style="list-style-type: none"> - the defendant is required to admit liability to the plaintiff's claim in whole or in part and make a proposal on payment terms (as to time and installments) without the need to supply information on his means at this stage. If the plaintiff accepts the defendant's proposal for payment, the court will, at the request of the plaintiff, enter judgment for the amount to be paid by the defendant at the times and rate specified in the defendant's proposal for payment; <p><u>2nd stage</u></p> <ul style="list-style-type: none"> - if the plaintiff does not accept the defendant's proposal for payment, the defendant will be required to provide information on his means, on the basis of which the Court will decide how the payment should be made; <p>(b) consider adding a proviso to the Explanatory Notes in Form No. 16 to alert defendants who intends to make admissions to money claims and propose payment terms that they will not normally be allowed to resile from their admissions if his proposal has not been accepted by the plaintiff; and</p> <p>(c) consider making clear in Order 13A rule 10 and the relevant forms that the court will make a determination on payment terms taking into account the defendant's means</p> | |
| Part 7 – Pleadings | 14 April 2008 | <p>(a) Consider whether the word "denial" in Order 18 rule 13(5) should be replaced by the word "non-admission";</p> <p>(b) confirm whether, for the purpose of Order 41A, pleadings include statements of claim;</p> <p>(c) consider setting out in the relevant forms</p> | LC Paper No. CB(2)1847/07-08(04) |

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| | | <p>for issuing a writ or an originating summons the requirement that the pleading should be verified by a statement of truth;</p> <p>(d) explain the possible consequences for a legal representative who has signed a statement of truth on behalf of his client but has failed to meet the requirements stipulated in Order 41A rule 4(3)(a) to (c), and it is subsequently found out that his client has made a false statement without an honest belief in its truth; and</p> <p>(e) clarify whether a statement of truth can be filed separately from the pleading that it verifies, and if so, whether any special procedure is required</p> | |
| <p>Part 8 – Sanctioned Offers and Payments (LC Paper No. CB(2)1661/07-08 (01))</p> | <p>18 April 2008</p> | <p>(a) Explain, with relevant case law, the criteria for the court's determination as to whether a judgment is better/more advantageous than the sanctioned offer or payment under the new Order 22 rules 19 and 20;</p> <p>(b) explain whether, and if so what, penalty would be imposed against a party who have disclosed a sanctioned offer or payment to the trial judge in breach of Order 22 rule 21(2);</p> <p>(c) clarify whether a plaintiff can make a sanctioned offer to one or more, but not all defendants where the defendants are sued jointly;</p> <p>(d) explain the arrangements for staying part of a claim as provided under the new Order 22A rule 18(3), and address the concern that the partial settlement of a claim allowed under the regime of sanctioned offers and payments would prejudice the outcome of the trial on the remaining parts of the claim, with information on the relevant experience of UK under the Civil Procedure Rules;</p> <p>(e) consider the need to draw to the attention of unrepresented litigants that an offer for settlement which does not qualify as a</p> | <p>LC Paper No. CB(2)1847/07-08(04)</p> <p>Response is awaited for item (c)</p> |

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| | | <p>sanctioned offer/payment would still be taken into account in the court's exercise of its general discretion as to costs under Order 62 rule (5);</p> <p>(f) consider, in relation to the new Order 22 rule 23(2) -</p> <p>(i) replacing the word "appropriate" which gives the impression that a defendant is actually paying money into court rather than changing the nature of the money already paid into court;</p> <p>(ii) specifying clearly when the money appropriated in accordance with rule 23(2) would deem to be a sanctioned payment, in view of the proposed time limit for the acceptance of a sanctioned payment; and</p> <p>(iii) the need for prescribing a standard form for giving notice under rule 23(2)(a).</p> <p>The Judiciary Administration informed members that the following amendments would be made -</p> <p>(a) a provision similar to Order 20 rule 20(2) would be made to Order 20 rule 19 so that a plaintiff and defendant would be subject to the same financial sanctions for non-acceptance of a sanctioned offer/payment;</p> <p>(b) the new Order 22 rule 5(6)(b) would be deleted, pursuant to the decision of the Steering Committee on Civil Justice Reform that it is unnecessary to require the offeror of a sanctioned offer to file with the Court a certificate of service of the offer as provided under the rule; and</p> <p>(c) references to pre-action protocol would be deleted from the new Order 22 rule 6(2) to (4), in the light of the Judiciary's revised proposal to confine the proposed sanctions</p> | |

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| | | for non-compliance to a rule or a court order at this stage | |
| Part 10 – Case Management Timetabling and Milestones (LC Paper No. CB(2)1705/07-08 (01)) | 24 April 2008 | (a) Consider adding a note to the questionnaire on case management to alert the parties that they should, as far as possible, try to agree the directions and timetable for the case without requiring reference to the court; and (b) consider setting out explicitly in Order 25 rule 1B the threshold for granting applications for variation of milestone dates, as in the case of non-milestone dates | Response is awaited |
| Part 11 – Vexatious Litigants | 24 April 2008 | Clarify the mode for commencing proceedings for applications for vexatious litigant orders under the existing and proposed procedures; and consider whether a fast-track procedure should be provided for applications involving little or no factual disputes | Response is awaited |
| Part 15 – Wasted Costs | 24 April 2008 | (a) Clarify the scope of "legal representative" as defined in Order 62 rule 1(1), in particular whether it covers ex-legal representatives where a litigant has changed legal representatives during the course of the litigation; and (b) clarify whether there are any sanctions under the proposed rules for breach of Order 62 rule 8C (Application for wasted costs order not to be used as a means of intimidation) and address members' concern about the practical difficulties in monitoring compliance with the rule | Response is awaited |
| Part 14 - Interlocutory Applications and Summary Assessment of Costs (LC Paper No. CB(2)1735/07-08 (01)) | 29 April 2008 | (a) Clarify whether "the Court " stated in Order 62 rule 9A(4) and (5) refers to the taxing master; and if so, whether consideration would be given replacing the words "the Court" with "taxing master" for the sake of clarity; (b) clarify whether the phrase "aggrieved by the order" in Order 62 rule 9A(2) introduces an additional condition for seeking a taxation of costs and review the need for the phrase; | Response is awaited |

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| Part 16 – Witness Statements and Evidence | 29 April 2008 | (a) Confirm whether the intention of Order 38 rule 2A(7)(b) is to allow a witness to amplify his witness statement (rule 2A(7)(b)(i)) or to supplement it with evidence in relation to matters which have arisen since serving the witness statement (rule 2A(7)(b)(ii)); and if so, whether consideration would be given to replacing the word "and" with the disjunctive "or" | Response is awaited |
| Part 17 – Expert Evidence | 29 April 2008 | (a) Clarify the circumstances under which the court may make an order for appointment of a single joint expert under Order 38 rule 4A(1), in particular whether such an order can be made if none or only one of the parties intends to appoint an expert witness; and (b) explain the operation of Order 38 rule 4A(6) (which empowers the court to set aside an order on the appointment of a single joint expert) and consider setting out clearly in the rule the procedures involved. | Response is awaited |
| Part 20 - Appeals (LC Paper No. CB(2)1786/07-08 (01)) | 5 May 2008 | (a) Provide information on the total number of applications to the Court of Appeal for leave to appeal which are made ex-parte in the past few years; and the number of those which are subsequently reconsidered inter partes; (b) in respect of members' concern about the proposed amendments on the calculation of time for making an application for leave to appeal or appeal, the Judiciary Administration was requested to - (i) provide information on the time frame normally required for the perfection of an order; (ii) consider drawing up a performance pledge on the time frame for the perfection of an order; and (iii) explain the consequences should an appellant fail to comply with Order 59 rule 5(1)(a) which requires the | Response is awaited |

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| | | <p>appellant to lodge with the Registrar a copy of the sealed judgment or order within seven days after the service of the notice of appeal was effected; and</p> <p>(c) convey to the Judiciary members' views and reservation whether Order 59 rule 2A(8) is in the interest of justice as the rule would deprive the aggrieved party the right to an oral hearing, and provide a written response thereon (Rule 2A(8) provides that the Court of Appeal may refuse a request made by an aggrieved party for reconsideration of an application for leave to appeal at an oral hearing where the Court of Appeal is of the view that the application is totally without merit)</p> <p>The Judiciary Administration informed members that the Steering Committee on Civil Justice Reform has taken on board the amendments proposed by Mr Eric CHEUNG in his submission dated 7 April 2008 [LC Paper No. CB(2)1529/07-08(01)] in relation to Order 59 (Appeals). The following changes would be made to the Order accordingly -</p> <p>(a) the words "by a summons" would be deleted from rule 2B(1); and</p> <p>(b) the words "in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits" would be deleted from rule 10(2).</p> | |
| <p>Part 21 - General Approach to Inter-party Costs LC Paper No. CB(2)1786/07-08(02))</p> | <p>5 May 2008</p> | <p>Explain the proposed increase in costs in relation to items 1 and 4 of Part III (Miscellaneous) of the Second Schedule to Order 62</p> | <p>Response is awaited</p> |
| <p>Part 23 – Judicial Review (LC Paper No. CB(2)1361/07-08(01))</p> | <p>21 February 2008</p> | <p>Provide supplementary background information on Order 53 relating to judicial review, including information on the reasons for and the impact of the proposed changes</p> | <p>LC Paper No. CB(2)1361/07-08(01)</p> <p>The proposed amendments in</p> |

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| | | | Order 53 concerning the requirement to serve an application for leave on other parties will be removed |
| "Revised Part 23 - Judicial Review" (LC Paper No. CB(2)1847/07-08 (03)) | Informal discussion after the meeting on 8 May 2008 | (a) Explain the consequences for an applicant who fails to list in his application for leave to apply for judicial review the names of all interested parties as required under the revised Order 53 rule 2A(2)(a)(iv); and (b) explain, with relevant case law, the criteria for the court's determination as to who should bear the cost of the proceedings involving interested parties named by the applicant | Response is awaited |

Council Business Division 2
Legislative Council Secretariat
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