

**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 16 May 2008)**

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
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) For (a): Order 1A rule 1(d) will be revised to read "to ensure fairness between the parties".

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
Part 3 – Pre-action Protocols and Costs-only Proceedings	21 February 2008	<p>(a) Address members' concerns/queries about imposing costs and other financial sanctions for non-compliance of practice directions and pre-action protocols; and</p> <p>(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))</p>	<p>LC Paper No. CB(2)1373/07-08(01)</p> <p>For (a): 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.</p>
Part 4 – Commencement of proceedings	8 April 2008	<p>(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;</p> <p>(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;</p> <p>(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</p> <p>(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</p>	<p>LC Paper No. CB(2)1847/07-08(04) and LC Paper No. CB(2)1928/07-08(02) [for item (d)]</p> <p>For (a): references to a specific amendment rule/part of amendment rules will be deleted from all relevant transitional provisions.</p> <p>For (d): the two rules will be amended to make it clear that the proceedings dealt with by these orders are ex parte in nature and specify that the form to be used is an originating summons in Form No. 11.</p>
	15 May 2008	Clarify whether there are express provisions in the rules on the procedural steps involved for cases commenced by originating summonses,	Response is awaited

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
		(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	For (c): Order 13A, rule 10 and the Explanatory Notes in the Forms 16 and 16C would be amended in the light of members' views.
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 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>LC Paper No. CB(2)1847/07-08(04)</p> <p>For (c): the requirement will be set out in the relevant forms.</p>
Part 8 – Sanctioned Offers and Payments (LC Paper No. CB(2)1661/07-08 (01))	18 April 2008	<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</p>	<p>LC Paper No. CB(2)1847/07-08(04) and LC Paper No. CB(2)1928/07-08(02)</p> <p>For (c): to cater for the issue of costs between</p>

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
		<p>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 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</p>	<p>defendants, a provision will be added to require that the notice of acceptance of the plaintiff's sanctioned offer should be given to other defendants.</p> <p>For (e): the Judiciary will consider including such information in updating the relevant information pamphlet for unrepresented litigants.</p> <p>For (f)(ii): amendments will be made to clarify when the money is deemed to be a sanctioned payment.</p>

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
		<p>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 for non-compliance to a rule or a court order at this stage</p>	
<p>Part 10 – Case Management Timetabling and Milestones (LC Paper No. CB(2)1705/07-08 (01))</p>	<p>24 April 2008</p>	<p>(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</p> <p>(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</p>	<p>LC Paper No. CB(2)1928/07-08(02)</p> <p>For (a): this will be dealt with by the relevant Practice Direction.</p> <p>For (b): Order 25 rule 1B will be amended to specify that the Court shall not grant an application for variation of a milestone date unless there are exceptional circumstances.</p>
<p>Part 11 – Vexatious Litigants</p>	<p>24 April 2008</p>	<p>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</p>	<p>LC Paper No. CB(2)1928/07-08(02)</p>
<p>Part 14 – Interlocutory Applications and Summary</p>	<p>29 April 2008</p>	<p>(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</p>	<p>LC Paper No. CB(2)1928/07-08(02)</p> <p>For (a): amendments</p>

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
Assessment of Costs (LC Paper No. CB(2)1735/07-08 (01))		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;	will be made to replace references to 'the Court' by "taxing master". For (b): the phrase will be deleted accordingly.
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	LC Paper No. CB(2)1928/07-08(02)
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"	LC Paper No. CB(2)1928/07-08(02)
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.	LC Paper No. CB(2)1928/07-08(02) Amendments will be made to Order 38 rule 4A as detailed in para 16 of the above paper.

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
<p>Part 19 – Leave to Appeal (LC Paper No. CB(2)1786/07-08 (01))</p>	<p>5 May 2008</p>	<p>(a) To provide statistics on applications to the Court of Appeal and renewal leave applications;</p> <p>(b) clarify whether the proposed amendments on the calculation of time for making an application for leave to appeal or appeal, i.e. from the date of an order (instead of from the date of the perfection of an order as at present), would affect the operation of the proposed Order 59 rule 5(1), which requires the appellant to lodge with the Registrar a copy of the sealed judgment or order within 7 days after the service of the notice of appeal;</p> <p>(c) provide information on the time frame normally required for the perfection of an order and consider drawing up a performance pledge on the time frame for the perfection of an order; and</p> <p>(d) 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>LC Paper No. CB(2)1928/07-08(02)</p>

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
		(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).	
Part 22 - Taxing the Other Side's Costs LC Paper No. CB(2)1786/07-08 (02))	5 May 2008	Explain the proposed revisions to scale costs and fixed costs in the Schedules of Order 62	LC Paper No. CB(2)1928/07-08(02)
Part 23 – Judicial Review (LC Paper No. CB(2)1361/07-08 (01))	21 February 2008	Provide supplementary background information on Order 53 relating to judicial review, including information on the reasons for and the impact of the proposed changes	LC Paper No. CB(2)1361/07-08(01) The proposed amendments in 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 if an applicant fails to identify all the interested parties in an application for leave for judicial review; and (b) clarify the costs consequences, if any, on the applicant if an interested party named in the application form turns out to be not truly an "interested party"	LC Paper No. CB(2)1928/07-08(02)
	15 May 2008	(c) provide a workflow of the procedures involved for applications for judicial review under the revised Order 59 (e.g. what would happen if it has come to the applicant or the court's attention at a late stage that there is an interested party who should be served; the possible courses of actions which can be taken by an interested party who has or has not been named in the application; how costs are to be determined for proceedings involving interested parties, etc.), and clarify whether such procedures have been provided for in the rules.	Response is awaited

Subject	Date of meeting	Follow-up actions required	Judiciary Administration / Administration's response
Transitional provisions	15 May 2008	Confirm whether there would be conflicts among the different transitional provisions in different parts of the rules, and clarify whether the court has jurisdiction to deal with such situations	Response is awaited

Council Business Division 2
Legislative Council Secretariat
19 May 2008