

立法會

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Subcommittee on District Court Equal Opportunities (Amendment) Rules 2014

Background brief

Purpose

This paper provides background information on the District Court Equal Opportunities (Amendment) Rules 2014 ("the Amendment Rules") and views expressed by the Panel on Administration of Justice and Legal Services ("the Panel") on adjudication of Equal Opportunities ("EO") claims in the District Court.

Background

EO Claims

2. According to the Legislative Council Brief issued by the Judiciary Administration ("JA") in June 2014 (File Ref.: JUD DEV 1-145/6) ("the LegCo Brief"), at present, anti-discrimination statutes, being social legislation protecting civil rights, include the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602). Unlawful conduct under these ordinances include sex, pregnancy or family status discrimination, sexual harassment, disability discrimination or harassment, and racial discrimination, harassment or vilification, and victims may bring legal proceedings in court to claim compensation or other remedies (viz. EO claims).

The Review

3. The existing procedures for EO claims, which are governed by the Rules of the District Court (Cap. 336H) as supplemented by more specific rules set out in the District Court Equal Opportunities Rules (Cap. 336G), require the filing of a statement of claim, a defence and a reply (technical pleadings) in the

same way that those pleadings are applicable to ordinary civil claims filed in the Court. According to paragraph 8 of the LegCo Brief, the technical pleadings are difficult to use, especially for litigants in person.

4. In September 2011, the Judiciary issued a consultation paper recommending, among others, that technical pleadings be replaced with more informal claim and response forms to expedite the adjudication of EO claims.

5. The objectives of the legislative amendments, the existing arrangements and the proposed simplified procedures are detailed in paragraphs 6 to 24 of the LegCo Brief. A comparison of the existing arrangements and the proposed simplified procedures is as follows:

	<u>Existing arrangements</u>	<u>Proposed simplified procedures</u>
a. Initiate an EO claim	By way of a writ	File in the court a completed "claim form"
b. Notify respondent	A plaintiff may have up to 12 months to send a writ of summons already issued to the defendant	The court to send a copy of the "claim form" to the respondent, and inform him/her the date of the first directions hearing (normally about 8 to 12 weeks from the filing of the form)
c. Respondent opposing the claim	File acknowledgment of service and there is a need to comply with the relevant technical requirements	File with the court and send to the claimant a completed "response form" within 28 days after receipt of information under (b) above
d. Provision of further particulars	By way of exchange of correspondence or formal applications to the court	Within 14 days after receipt of information under (b) or (c) above, either the respondent or the claimant may send a "request form" to the other party to demand the provision of further particulars of the grounds to substantiate the case

The Amendment Rules

6. The Amendment Rules are made by the District Court Rules

Committee¹ under sections 73B - 73E of the District Court Ordinance (Cap. 336)² to amend Cap. 336G to introduce a simplified procedure for the District Court to deal with EO claims.

7. Rule 4 adds new definitions to rule 2 of Cap. 336G for the simplified procedure.

8. Rule 5 adapts the reference to "Crown" to "Government" in rule 2A of Cap. 336G.

9. Rule 6 provides for the application of Cap. 336H to an EO claim to the extent of any matter not provided for under Part 2 of Cap. 336G or as the Court may otherwise direct.

10. Rule 7 adds a new Part 2 (rules 7 to 23) to provide that/for:

- (a) a person wishing to make an EO claim ("the claimant") must file a notice of claim ("Form 1") to include a concise statement of the circumstances of the claim, remedy or relief claimed and any question sought to be determined (new rule 7);
- (b) as soon as practicable after Form 1 is filed, the Court³ is to cause to be served on the respondent a notice to the respondent ("Form 2") accompanied by a copy of Form 1 (new rule 8);
- (c) a respondent wishing to oppose the claim must file a notice of response ("Form 3") within 28 days thereafter (new rule 10);
- (d) the parties may serve on each other a notice of request for further particulars ("Form 4") to which the requested party must reply within 14 days, unless the request is disallowed for being unnecessary or vexatious (new rules 9 and 11);
- (e) the Court may join interested parties on application of the claimant or respondent or on its own motion (new rule 12), make an order against the respondent for failing to file a response (new rule 13), or strike out a claim for want of appearance (new rule 14);

¹ Under section 17 of Cap. 336, the District Court Rules Committee shall consist of the Chief Judge of the High Court, 3 District Judges, a barrister nominated by the Hong Kong Bar Association, a solicitor nominated by the Law Society of Hong Kong and the Registrar of the District Court.

² Under sections 73B, 73C, 73D and 73E of Cap. 336, the Rules Committee may make rules regulating the practice of the District Court in the exercise of its jurisdiction (and the forms of proceedings therein) under Cap. 480, Cap. 487, Cap. 527 and Cap. 602 respectively.

³ By virtue of Rule 4(1) of the Amendment Rules and Order 1, rule 4(2) of Cap. 336H, the Court means the District Court or any judge thereof whether sitting in court or in chambers or the Registrar or any master.

- (f) the claimant may discontinue or withdraw the proceedings under Part 2 (new rule 15);
- (g) a party to the proceeding under Part 2 must provide the party's name and address for service for the proceeding in the first document that the party files with the Court for the proceeding (new rule 16);
- (h) the procedure to change the address for service for the proceeding under Part 2 (new rule 17) and the manner of service (new rule 18);
- (i) the time at which documents served by ordinary post is taken to have been served (new rule 19);
- (j) the power of the Court to order substituted service (new rule 20);
- (k) any document filed or served for the proceeding under Part 2 may be amended (new rule 21);
- (l) the consequence of failing to comply with Part 2 (new rule 22);
and
- (m) Forms 1 to 4 (with notes for litigants) in the Appendix (added by Rule 8 of the Amendment Rules) may be used for proceedings under Part 2 with any variations that the circumstances require (new rule 23).

11. Rule 8 adds specified forms to Cap. 336G.

12. Rule 9 makes transitional arrangements for EO claims initiated before L.N. 86 comes into operation on 1 November 2014.

13. The Judiciary Administration has provided clarifications on certain technical and drafting issues raised by the Legal Service Division of the LegCo Secretariat (LC Paper No. LS64/13-14).

Views and concerns expressed by members of the Panel

14. Members noted the information paper issued by the Judiciary in June 2012 on its plan to improve the procedures and practices in the adjudication of EO proceedings in the District Court (LC Paper No. CB(2)2480/11-12(01)).

15. At the meeting on 25 February 2014, the Panel received a briefing by the Judiciary on the proposed legislative amendments to streamline the adjudication of EO claims in the District Court. Members noted that the Equal Opportunities Commission, the Hong Kong Bar Association and the Law Society of Hong Kong are generally supportive of the proposed legislative amendments.

16. Panel members generally supported the proposal. Some members expressed concern that under the simplified procedures, the court would be granted discretionary powers to order the use of formal pleadings instead of the prescribed claim and response forms, and to extend deadlines for various time limits in appropriate cases. They considered that there was a need to set down criteria for the exercise of such powers.

Latest development

17. At the meeting of the House Committee held on 20 June 2014, Members agreed that a subcommittee should be formed to study the Amendment Rules.

Relevant papers

18. A list of the relevant papers is given below –

<http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0225cb4-415-7-e.pdf>

<http://www.legco.gov.hk/yr13-14/english/panels/ajls/papers/aj0225cb4-415-5-e.pdf>

http://www.legco.gov.hk/yr13-14/english/subleg/brief/86_brf.pdf

<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0613ls-60-e.pdf>

<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0620ls-64-e.pdf>