

立法會
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Paper for the House Committee meeting on 24 October 2014

**Report of the Subcommittee on
District Court Equal Opportunities (Amendment) Rules 2014**

Purpose

This paper reports on the deliberations of the Subcommittee on District Court Equal Opportunities (Amendment) Rules 2014 ("the Amendment Rules").

Background

2. 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) (each "a relevant Ordinance"). Under the relevant Ordinances, victims of unlawful conduct (including sex, pregnancy or family status discrimination, sexual harassment, disability discrimination or harassment, and racial discrimination, harassment or vilification) may bring legal proceedings in the District Court ("the Court") to claim compensation or other remedies, viz. EO claims.

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 Legislative Council ("LegCo") Brief (File Ref.: JUD DEV 1-145/6), the technical pleadings are difficult to use for EO claims, 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 simplified procedures under the Amendment Rules are detailed in paragraphs 6 to 24 of the LegCo Brief. A comparison of the existing arrangements and the simplified procedures is as follows -

	<u>Existing arrangements</u>	<u>Simplified procedures</u>
a. Initiating an EO claim	By way of the issue of a writ of summons	By way of filing in the Court a completed "claim form"
b. Notifying respondent	After issuing a writ of summons, a plaintiff may have up to 12 months to serve it on the defendant	The Court would serve a copy of the "claim form" and a notice to the respondent, informing him/her of the date of the first directions hearing (normally about eight to 12 weeks from the filing of the form)
c. Respondent opposing the claim	File with the Court and serve on the plaintiff an acknowledgment of service and a defence which must comply with the relevant technical requirements	File with the Court and serve on the claimant a completed "response form" within 28 days after service of documents under (b) above
d. Provision of further particulars	By way of exchange of correspondence or formal applications to the Court	Within 14 days after service of the documents under (b) or (c) above, the respondent or the claimant respectively may send a "request form" to the other party to demand the provision of further particulars of the grounds on which the claim is made or opposed.

The District Court Equal Opportunities (Amendment) Rules 2014

6. The Amendment Rules are made by the District Court Rules Committee¹ under sections 73B to 73E of the District Court Ordinance (Cap.

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.

336)² to amend Cap. 336G to introduce a simplified procedure for the 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 the new Part 2 of Cap. 336G (see below) 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);
- (f) the claimant may discontinue or withdraw the proceedings under Part 2 (new rule 15);

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.

- (g) a party 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) a document is taken to have been served at the time at which it is delivered by ordinary post (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 9 provides for transitional arrangements for EO claims initiated before the Amendment Rules comes into operation on 1 November 2014.

12. The Judiciary Administration ("JA") has provided clarifications on certain technical and drafting issues raised by the Legal Service Division of the LegCo Secretariat (LC Paper Nos. LS64/13-14, CB(4)967/13-14(02) and (03)).

The Subcommittee

13. At the House Committee meeting held on 20 June 2014, Members agreed that a subcommittee should be formed to study the Amendment Rules in detail. The membership list of the Subcommittee is in **Appendix**. Under the chairmanship of Hon James TO Kun-sun, the Subcommittee has held one meeting with JA and the Department of Justice ("DoJ").

14. The first meeting of the Subcommittee scheduled for 2 July 2014 was cancelled due to the lack of a quorum, and the 28-day period for amending the Amendment Rules under the negative vetting procedure as specified in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) expired at the Council meeting of 9 July 2014 as the meeting was unable to deal with the motion to extend the scrutiny period. Notwithstanding that no amendments could be made to the Amendment Rules, the Subcommittee still invited JA and

DoJ to note members' views and concerns expressed at the meeting and consider incorporating them in future amendments.

Deliberations of the Subcommittee

Applicability of the simplified procedures

15. Members have discussed whether the simplified procedures set out under the Amendment Rules can also apply to the adjudication of cases involving both EO claims and other causes of action (e.g. negligence at common law) ("mixed claims").

16. According to JA, the simplified procedures shall apply whenever there is a claim under a relevant Ordinance (see the new rule 7 of Cap. 336G). However, a claimant may deviate from Form 1 (designed for EO claims) and use the simplified form to include a non-EO claim. JA has further pointed out that a failure by the claimant to comply with the Amendment Rules (e.g. in respect of the manner or form in the commencement of proceedings) shall not nullify the proceedings, and that the Court has the general power under Order 2, rule 1 of Cap. 336H to make such order as it thinks fit to enable the mixed claims to proceed. Furthermore, the Court has the power to order separate trials (under Order 15, rule 5 of Cap. 336H), and transfer proceedings in and out of a particular list (under Order 72, rules 5 and 6 of Cap. 336H). In the exercise of its powers, the Court will seek to give effect to the underlying objectives under Order 1A, rule 1 of Cap. 336H to ensure, *inter alia*, the cost-effectiveness and fairness of the proceedings.

17. On whether the Amendment Rules are capable of catering for circumstances involving parties who are minors, incapacitated or deceased, JA has advised that the existing rules in Cap. 336H governing proceedings by and against estates (Order 15, rule 6A), change of parties by reason of death (Order 15, rule 7) and disability (Order 80) continue to apply to EO claims by virtue of the new rule 4(2) of Cap. 336G.

Notice period

18. Members have noted with concern the short notice period under the new rule 12(3) of Cap. 336G which requires a copy of the notice of application to join an interested person to be served on that person not less than two clear days before the hearing date set out in the notice. In reply, JA has advised that it has made reference to two similar sets of simplified procedures under the Employees' Compensation (Rules of Court) Rules (Cap. 282B) and the Lands Tribunal Rules (Cap. 17A), both of which provide for a notice period of two clear days before the hearing date. Moreover, the Court at present has powers

to make appropriate arrangements if the interested person(s) could not attend the hearing on the appointed date.

Transitional arrangements

19. The Subcommittee notes that the Amendment Rules will come into operation on 1 November 2014. Members have further noted that according to the transitional arrangements set out in rule 9 of the Amendment Rules, if a writ has already been issued prior to the commencement of the Amendment Rules, the existing procedures under Cap. 336H shall apply unless the Court orders otherwise.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
21 October 2014

**Subcommittee on District Court Equal Opportunities
(Amendment) Rules 2014**

Membership list

Chairman	Hon James TO Kun-sun
Members	Hon Albert HO Chun-yan Hon TAM Yiu-chung, GBS, JP Hon Cyd HO Sau-lan, JP Hon Paul TSE Wai-chun, JP Hon Dennis KWOK

(Total : 6 members)

Clerk	Ms Debbie YAU
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Legal Adviser	Mr Bonny LOO
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