

**Note for the Bills Committee on the
District Court (Amendment) Bill**

Appeals from District Court

This paper set out to explain the existing mechanism of appeals from the District Court and the proposed revised mechanism under the Amendment Bill. This paper also explores possible further changes to the revised mechanism.

(I) Existing Mechanism of Appeals from the District Court

2. There is currently no master in the District Court, so there is no master's appeals.

3. Appeals from decisions of District Court Judges, whether interlocutory or final, are to the Court of Appeal and require leave from either the District Court Judge or the Court of Appeal : s.63 District Court Ordinance.

4. The application for leave should be made to the District Court Judge within 28 days: s.63(1) District Court Ordinance. As a general rule, the application for leave should be made in the first instance to the trial judge, except where it is impossible or impracticable to apply to the District Court : s.63(3) District Court Ordinance and O.59 r.14(4) RHC.

5. Where the District Court refuses leave to appeal, the appellant can appeal against the refusal to the Court of Appeal within 14 days: s.63(1) District Court Ordinance. Leave application to the Court of Appeal is dealt with by a single Justice of Appeal and can be disposed of on paper without hearing : O.59 r.14(2) RHC. If leave is refused without a hearing, the appellant can renew the application in open court within 7 days : O.59 r.14(2A) RHC. But where it is an appeal against refusal of leave by a single Justice of Appeal without hearing, then it has to be heard in open court and two Justices of Appeal will suffice.

(II) Proposed Mechanism of Appeal from District Court under the Amendment Bill

6. Appeals from decisions of the District Court Registrar and Judges, whether interlocutory or final, lie to the Court of Appeal : new s.63 under clause 32 of the Amendment Bill.

7. An appeal is subject to rules of court: new s.63(2) under clause 32 of the Amendment Bill.

8. Under the revised District Court Rules, it has been proposed that:

- (a) Appeals from decisions of the District Court Registrar and master (whether interlocutory or final) are to the Court of Appeal and require leave from either the District Court Judge or the Court of Appeal;
- (b) Application for leave is to be made to the District Court Judge in the first instance;
- (c) Where leave is refused by District Court, the application can be renewed before the Court of Appeal; and
- (d) The procedure relating to applying for leave from the Court of Appeal remains unchanged as it is also governed by the Rules of the High Court.

9. While the Amendment Bill is silent on whether leave is generally required for appeals against decisions of judges or masters, it specifies that leave is not required for certain matters, namely, appeals arising under s.20 (committal for contempt), s.29 (punishment for rescuing goods in an execution under distraint action), s.48B (contempt of court) and s.52D (order for arrest to enforce or secure or pursue civil claims): s.63(3) under clause 32 of the Amendment Bill. This subsection follows Kempster's recommendations.

III. Deliberations at Bills Committee Meetings

10. When the above matters were discussed by the Bills Committee, it was pointed out that under existing High Court procedure, appeals from decisions of High Court masters lie to a judge of the Court of First Instance by way of re-hearing. It is not clear why decisions of High Court masters lie to the judge of the Court of First Instance while those of District Court masters lie to the Court of Appeal. It was also raised that the Administration should consider carefully whether the increase in jurisdiction of the District Court and the proposed mechanism of appeal would lead to much heavier workload for the Court of Appeal.

IV. Possible Further Changes to the Mechanism of Appeal from District Court

11. With the benefits of Members' comments, we have re-considered the matter to see if any further changes should be introduced to the proposed mechanism of appeal from the District Court.

12. We consider that the objectives of the appeal mechanism should be :-

- (a) To keep costs for parties and system as low as possible;
- (b) To avoid delays as far as possible;
- (c) To keep uniformity of practice and cohesion; and
- (d) To have as little disruption to the present system as possible.

13. In view of these objectives, we therefore propose that the new mechanism of appeal from District Court should be as follows:

(a) District Court Master's Decisions

In general, appeals from decisions of Masters of District Court should lie to a District Court judge as of right by way of rehearing. In some exceptions, the appeals go to the Court of Appeal with leave. This will be in line with the relevant High Court procedure [ref. O.58 r.1 & 2, RHC], and is also consistent with Kempster's recommendation. We see merits in this revision as this would enable the District Court masters and judges to work together and provide a uniformity of practice.

(b) District Court Judges' Decisions

The existing system will continue except certain amendments to the leave period as set out in (c)(ii)&(iii) below should be made.

(c) Leave periods and Time for Appeals

Bearing in mind the objective of avoiding delays as far as possible, and the desirability of bringing the leave periods in line with those under the Rules of the High Court, we propose the following:-

- (i) Appeals from decisions of District Court Registrar and masters to a District Court judge should be made within 5 days [ref. O.58 r.1 RHC];
- (ii) Regarding appeals from an interlocutory order by a District Court judge, application for leave should be made to the District Court judge within 14 days (as opposed to the present provision of 28 days) [ref. RHC O.59 r.4(3)]. This is because we do not think it is justifiable to allow a much longer period for application of leave to appeal against an interlocutory order by the District Judge and would like to bring the practice in line with that of the High Court. For appeals against decisions other than interlocutory orders by the District Court Judge, application for leave should be made to the District Court Judge within 28 days (s.63(1) District Court Ordinance);
- (iii) Where the District Court judges refuses leave to appeal, the appellant can appeal against the refusal to Court of Appeal within 7 days (as opposed to the present provision of 14 days) [ref. RHC O.59 r.14(3)]. If leave application is refused by the Court of Appeal without a hearing, the appellant can renew the application in open court within 7 days [O.59 r.14 (2A) RHC].

14. We intend to move a CSA and make necessary revisions to the draft District Court Rules to bring into effect the proposed mechanism at para. 13 above.

Workload of the Court of Appeal

15. With masters' appeals going to the District Court judges, we envisage that the increased workload for the Court of Appeal should be more manageable. We would however carefully monitor the caseload situation of the Court of Appeal to see if additional resources are required.