

**Note for the Bills Committee on
District Court (Amendment) Bill 1999**

**Agreements as to Jurisdiction :
Clause 22 (section 39) of the Bill**

Purpose

The purpose of this note is to respond to Members' queries and views on the proposed introduction of section 39 of the Bill.

Background

2. Under section 39 of the Bill, it has been proposed that the District Court has jurisdiction to hear and determine an action or proceeding in section 32, 33, 35 36, or 37(1)(c), (d) or (f) without regarding the monetary limits specified if all parties to the action or proceeding agree for the Court to have jurisdiction in the action or proceeding by a memorandum signed by them or their legal representatives. It has also been proposed that a memorandum under this section may be entered into at any time. The action or proceeding is taken to have been within the jurisdiction of the Court from its commencement if the agreement is entered into after the action or proceeding commenced.

3. At previous Bills Committee meetings, Members asked the Administration to explain the operation of the proposed section 39. Some Members expressed concerns that this would enable the District Court to accept unlimited jurisdiction subject to the agreement of parties, and that this represented a radical departure from the existing operation of the Court.

The Administration's Response

4. The proposal was an integral element of the Kempster Report (June 1993). One key objective of the Kempster Report was to encourage a greater flow of civil work directly into the District Court; thereby relieving pressures on and delays in the High Court. The Kempster Working Party prepared a draft amendment Ordinance (schedule I to the Report). The proposed section 37B of the draft Ordinance would allow the District Court to accept unlimited jurisdiction for specified actions or proceedings by agreement (P.8 of the Kempster Report).

5. It should also be pointed out that while the proposed section 39 would enable the District Court to accept unlimited jurisdiction by agreement, the Court has the final say on where an action or proceeding should be heard. Under the proposed section 43 (section 39A under the Kempster Draft), the Court may on its own motion (whether or not the parties have entered into a jurisdiction agreement), order the transfer to the Court of any action/ proceeding within its jurisdiction.

6. In the light of Members' comments, we have re-considered the desirability of the introduction of the proposed section 39. As a matter of principle, we note that District Court is a Court with limited jurisdiction governed by statute. As such, it may not be appropriate for the Court to confer upon itself jurisdiction beyond the limits set out in the Ordinance, even if this is subject to the agreement by parties to the action or proceeding. Moreover, as the proposed revised general jurisdictional limits is now set at \$600,000, we are of the view that we would be able to achieve the Kempster objective of encouraging a greater flow of civil work into the District Court. As such, the Administration intends to withdraw the proposed section 39 from the Bill.

7. The Administration has also taken the opportunity to re-visit the proposed section 44A (proposed section 41 in the Kempster Draft). The proposed section 44A(1) provides that the Court of First Instance may, if the parties consent, order the transfer to the District Court of all or part of an action or proceeding which is outside the jurisdiction of the Court, but would be within its jurisdiction except for the monetary limits specified in section 32, 33, 35, 36 or 37. Section 44A (2) provides that an order may be made at any stage of the proceedings. We consider these two sub-sections appropriate as the Court of First Instance is a court of unlimited jurisdiction, and the jurisdiction of the District Court for specified action or proceeding which is outside its statutory jurisdiction is conferred upon it by the Court of First Instance.

8. It is however noted that under the proposed section 44A(3), the Court of First Instance is required to make an order under this section unless it is of the opinion, by reason of the importance or complexity of any issue arising in the proceeding, or for any other reason, the action or proceeding ought to remain in the Court of First Instance. Being a court of unlimited jurisdiction, we consider it inappropriate to fetter the discretion of the Court of First Instance to dispose of cases which are within its jurisdiction but fall outside the jurisdiction of the District Court. As such, we also intend to withdraw the proposed section 44A(3) from the Bill.

The Way Forward

9. We intend to move a CSA to withdraw the proposed section 39 and section 44A(3) from the Bill.