

CJRS 23/2008

**Subcommittee on Draft Subsidiary Legislation
Relating to the Civil Justice Reform**

**Response to Issues Raised at the
Subcommittee Meeting on 15 May 2008**

Purpose

On behalf of the Judiciary, the Judiciary Administration presents this paper, which sets out the Judiciary's response to the issues raised at the Subcommittee meeting on 15.5.2008. It must be emphasised that where views on the law are expressed herein, such views are not to be taken as statements of law by the courts. Judicial determinations or statements of law may only be made in actual cases that come before the courts after hearing argument.

Transitional Provisions

A. To confirm whether there are conflicts among the different transitional provisions in different parts of the rules, and clarify whether the court has jurisdiction to deal with such situations.

2. The Judiciary has not identified any conflicts among the different transitional provisions in different parts of the rules. If the transitional provisions create any difficulties in a particular case, the parties may seek directions from the Court.

Part 4 – Commencement of Proceedings

B. To clarify whether there are express provisions in the rules on the procedural steps for cases commenced by originating summonses (“OS”), and whether it is expressly provided that such procedural steps as pleadings, discovery, witness statements, etc. are avoided as unnecessary where an OS is issued to determine a question of law or construction in an uncontroversial factual context.

3. The procedural steps for cases commenced by OS are set out in O.28. The current practice is that, where there are likely to be few or no factual disputes, the overwhelming majority of proceedings involve the use of OS. Originating Motions (“OM”) are rarely used in practice save for specialist areas such as admiralty cases and in applications for the admission of overseas counsel. The OS procedure does not involve the use of pleadings, discovery, witness statements unless ordered by the Court (e.g. where factual disputes are found to exist). Under the OS procedure, the Court will generally be considering affidavit evidence only. Where expedition is required, a party can apply to the Court for abridgement of time and such other directions as required. The Court would consider the circumstances of each case rather than the mode by which the proceedings are commenced. There is a “summons day” every Friday, where interlocutory applications such as injunctions are dealt with.

Revised Part 23 – Judicial Review

C. To provide a workflow of the procedures involved for applications for judicial review under the revised O.53, particularly where an “interested party” is involved, what is expected of the interested party and how costs are to be determined.

4. As set out in **CJRS 19/2008**, the proposed requirement relating to “interested party” in the revised O.53 does not add to the obligations of an applicant, but merely brings forward the time when he has to decide who to be named as the respondent and who may be an interested party, so as to enable the Court to give directions timely and avoid unnecessary costs and delays.

5. In the light of the various views that have been expressed by the Subcommittee, the Steering Committee has reviewed the need for such a requirement having regard to the existing practice. Experience has shown that, in practice, (i) applicants invariably reveal in their papers the identities of the potential respondent(s) and/or interested party(ies); or (ii) if there is any failure in this regard, the Court, in granting leave, may give directions (including service) as to the respondent(s) and/or interested party(ies) in a particular case; or (iii) interested parties tend to identify themselves.

6. In view of the Subcommittee's concerns about the requirements relating to "interested party" in O.53, the Steering Committee has decided to remove all such requirements from the revised O.53. Nevertheless, the Court would (as in the current practice) exercise its discretion, in appropriate cases, to give directions. This discretion, together with the Court's case management powers under the existing and the proposed Rules, will, in appropriate cases, bring about the benefits expected of the original changes proposed in relation to "interested party" in O.53. Subject to any further views the Subcommittee may have, the Steering Committee will proceed to remove such changes from O.53.

Judiciary Administration
May 2008