

立法會
Legislative Council

LC Paper No. CB(2)2304/00-01
(These minutes have been
seen by the Administration)

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Bills Committee on Attachment of Income Orders (Amendment) Bill 2001

**Minutes of the 2nd meeting
held on Monday, 4 June 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Albert HO Chun-yan (Chairman)
Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon CHOY So-yuk
Hon LAW Chi-kwong, JP
Hon LI Fung-ying, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Dr Hon TANG Siu-tong, JP
Hon WONG Sing-chi
- Public Officers Attending** : Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs

Ms Phyllis H Y POON
Government Counsel
- Clerk in Attendance** : Ms Doris CHAN
Chief Assistant Secretary (2) 4
- Staff in Attendance** : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Meeting with the Administration

(LC Paper Nos. CB(2)1688/00-01(01) and (02))

Ms Audrey EU expressed disagreement with the Administration's response to members' suggestion concerning notification of change in employment as set out in paragraphs 8 and 9 of LC Paper No. CB(2)1688/00-01(01). She considered that where an attachment of income order (AIO) was in force in respect of a maintenance payer, he should be required to notify the maintenance payee of any change in employment so that the payee could take necessary actions to apply for a new AIO as the existing AIO would be invalidated by his change in employment. It should be an offence if a maintenance payer failed to do so. The Chairman shared the view of Ms EU.

2. Principal Assistant Secretary for Home Affairs (PAS(HA)) said that the Administration basically accepted the suggestion made by members. Paragraphs 8 and 9 of the paper referred to the situation where an AIO was "in force". Where an AIO had been discharged because of the maintenance payer's change in employment, a new arrangement to enable a new AIO to be issued as quickly as possible was proposed in paragraph 11 of the paper.

3. The Chairman asked whether members would consider that the requirement for a maintenance payer to notify a maintenance payee of his change in employment should be imposed on every maintenance payer regardless of whether there was an AIO issued against him. Ms LI Fung-ying considered that a maintenance payee could be afforded greater protection if there was such a requirement. Miss CHAN Yuen-han shared the view of Ms LI.

4. PAS(HA) pointed out that the drawback of imposing any additional legal obligation on either a maintenance payer or maintenance payee was that it would create a cause of possible conflict between the two parties. If a maintenance payer failed to comply with the requirement to notify the maintenance payee of his change in address, it was unlikely that he would comply with the requirement in respect of notification of change in employment. PAS(HA) said that although there was an increase in the number of judgment summons issued in respect of maintenance arrears in the past few years, it was believed that the number of maintenance payers who were responsible and punctual in making maintenance payments well exceeded the number of irresponsible payers. The Census and Statistics Department was conducting a survey with a view to obtaining more information in this aspect.

5. Ms Audrey EU expressed reservation about the proposed requirement as she

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believed that a majority of maintenance payers were responsible and punctual in making payments. She pointed out that the requirement might only bring about benefits to a maintenance payee in circumstances where a maintenance payer had new income capable of being attached on securing new employment.

6. PAS(HA) said that if the requirement aimed at varying the terms specified in an AIO, it would be fairer that both the maintenance payer and payee should be required to notify the other party of any change in employment so that the means of both parties could be assessed before the amount of maintenance payment was varied. If this was the case, a considerable amount of work would be created for all parties concerned.

7. PAS(HA) further said that under the Attachment of Income Order Rules, a maintenance payer who was discharging his liability to maintenance through an AIO had the obligation to notify the maintenance payee of any increase in his income or particulars of any new income source if the amount specified in the AIO was less than the amount payable by him under the maintenance order. The new arrangement proposed by the Administration was that if a maintenance payer ceased to receive any income from an income source to whom an AIO had been issued, he should apply to the court, with a copy to the maintenance payee, for a new AIO to be issued to his new income source. If he did not apply for a new AIO in respect of his new income, he would be required to make a statement to the court on the reasons, with a copy to the maintenance payee. Failure to comply with this requirement would constitute an offence. Miss CHOY So-yuk considered the arrangements acceptable and that no additional requirement in respect of notification of change in employment was necessary.

8. Ms Audrey EU noted that a maintenance payer who failed to notify the maintenance payee of any change in his address would commit an offence. She questioned why there had never been any prosecution for such an offence as revealed in paragraph 10 of the report published by the Inter-departmental Working Group (the WG). PAS(HA) explained that this might be due to the fact that even some lawyers did not know the channel for reporting such an offence. The Administration had therefore advised the Law Society of Hong Kong and non-governmental organisations that such an offence could be reported to the Police. The Chairman asked the Administration to provide the number of such cases reported to the Police after the parties concerned had been informed of the reporting channel.

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9. PAS(HA) said that the Immigration Department (ImmD) had been consulted as to whether it would be able to assist in the judgment summons procedure. As a letter notifying a maintenance payer that there was a judgment summons issued against him could not be placed at every immigration control point, it would take some time for ImmD to serve him the letter before his departure from the territory. The legal advice was that delaying a person's departure for the purpose of serving a letter, if not imposed by law, would amount to an unreasonable restriction upon the person's freedom to leave the territory and might be considered as unlawful detention. Miss CHOY So-yuk agreed that there should be proper procedures to empower ImmD to

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delay a person's departure to serve him a notification of judgment summons where necessary. She was of the view that the court should be able to assist in this aspect. The Chairman asked whether the Administration would explore ways to address the problem, e.g. the letter of notification might be stored in electronic form so that staff of ImmD would be able to retrieve it quickly at any of the immigration control point.

10. PAS(HA) said that if the purpose of ImmD giving a letter to a maintenance payer at an immigration control point was merely to notify him of the existence of a judgment summons, the purpose could be achieved by other means such as sending him the judgment summons by registered mail. A proposal being processed was that for the second service of judgment summons, the court might order another mode of delivery instead of personal service. Under the proposal, the court might also make an arrest order or prohibition order if it had reasonable grounds to believe that a court order to be served on a maintenance payer personally might not be able to secure his attendance. He added that under the existing law, a creditor could also apply to the court for a prohibition order to prohibit a debtor from leaving the territory to evade the debt. Therefore, a maintenance payee could also apply for such an order against the maintenance payer.

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11. The Chairman asked the Administration to provide the number of prohibition orders issued in the past few years which were related to recovery of maintenance arrears. Miss CHOY So-yuk asked about the reasons for having only issued a small number of prohibition orders. She considered that the problem of non-recovery of maintenance arrears was serious and asked about the effectiveness of a prohibition order in recovering such arrears.

12. PAS(HA) explained that the two main reasons for non-recovery of maintenance arrears were that a maintenance payer could not afford to pay as his income was low or he could not be located. As the application for a prohibition order had to be initiated by a maintenance payee, the Judiciary might not have the information on why maintenance payees did not apply for such an order. He pointed out that a prohibition order would be valid for a maximum of three months only - it would lapse on the expiry of one month and could be extended or renewed for a period of two months. A maintenance payee who wished to prohibit a maintenance payer from leaving the territory after a prohibition order had lapsed would have to apply for a fresh order.

13. Miss CHOY So-yuk asked whether the validity period of a prohibition order could be extended in order to save a maintenance payee the inconvenience of having to apply for a fresh order. PAS(HA) replied that the Administration had studied this issue and considered it inappropriate to extend the validity period as it would have human rights implications.

14. The Chairman pointed out that even after a maintenance payee had reported to the Police that the maintenance payer had failed to notify her of his change in address, the Police might not be able to locate the maintenance payer. The Chairman asked

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whether a prohibition order to prohibit the maintenance payer from leaving the territory would normally be issued under such circumstances.

15. Senior Assistant Legal Adviser said that if a person failed to comply with a court order to make maintenance payment, he would be summoned to appear before the court to explain the reason for the non-compliance. If he failed to appear, the court might issue a warrant of arrest against the person. Under the circumstance, he would be stopped at check points pursuant to the warrant, thereby not able to leave the territory.

16. The Chairman asked whether a warrant of arrest was required to be served on a person personally. PAS(HA) said that the Supreme Court Rules provided that the court might issue a warrant of arrest if it had reasonable grounds to believe that a court order to be served on a person personally might not be able to secure his attendance. Similar arrangements were proposed in the handling of maintenance payment. The drafting of the amendments to the Matrimonial Causes Rules to effect the new arrangements was in progress. As the proposed amendments involved detailed procedural and legal policy issues, advice had been sought from a number of departments concerned, such as the Department of Justice, the Legal Aid Department and the Judiciary.

17. The Chairman opined that the circumstance that the judgment summons could not be served on a maintenance payer personally on the ground that he could not be located should be included as one of the criteria for the court to issue a prohibition order. PAS(HA) pointed out that the wording for the proposed amendments to the Matrimonial Causes Rules followed that of the Supreme Court Rules. The Chairman expressed concern that the proposed wording might not have significant effect on the existing problem as a lot of maintenance payees were unable to locate the maintenance payers, thus judgment summonses could not be served successfully.

18. In reply to Miss CHAN Yuen-han, PAS(HA) said that the contents of the amendments to the Matrimonial Causes Rules were detailed in the WG report. The Amendment Rules, when approved by the Chief Justice, had to undergo negative vetting by the Legislative Council.

19. In response to Ms Cyd HO, the Chairman said that as the Bill, if enacted, would benefit some maintenance payees, members should focus discussion on the Bill in the hope of having it passed in the current legislative session. Members could monitor the progress of the other improvement measures relating to maintenance payment in the Panel on Home Affairs. Mr LAW Chi-kwong shared the view of the Chairman.

20. Ms Cyd HO asked whether the Administration could provide the number of judgment summonses relating to maintenance arrears which could not be successfully delivered on the first service. She suggested that the Administration should consider collecting such information for future reference if it was not recorded in the past. PAS(HA) said that the Judiciary had been requested to keep record of such cases for a

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certain period of time in order that the Administration could assess the problem more accurately. Ms LI Fung-ying said that paragraph 4.17 of the WG report stated that the records kept by the Judiciary for the months of October and November 1999 showed that 20 of 69 scheduled hearings in connection with maintenance arrears were adjourned because the maintenance payers failed to appear in court. Five of the 20 hearings had to be further adjourned because the adjournment orders could not be served on the maintenance payers personally. PAS(HA) said that as the figures showed that the problem of service of judgment summonses was serious, the Administration therefore proposed a relaxation to the service requirements.

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21. Miss CHOY So-yuk expressed the view that members would wish to be informed of the effect of the proposed arrangements under the Bill and other improvement measures recommended by the WG. She also expressed concern as to whether there would be any significant improvement to the judgment summons procedure after the proposed arrangements took effect. She asked about the estimated time required by the proposed procedures as compared with the existing procedures. PAS(HA) said that the subject was outside the scope of the Bill but he would liaise with the Department of Justice and provide the information for members' reference.

22. The Chairman said that he disagreed with the Administration's refusal to include the circumstance that a maintenance payee might be abused by the maintenance payer when collecting or demanding payment as one of the criteria for the issue of an AIO. In his view, the order for payment to be made through a bank was not the best way to handle the matter. An AIO would be able to provide a greater sense of security to a maintenance payee. Miss CHOY So-yuk supported the Chairman's view.

23. PAS(HA) responded that the reasons for not supporting the proposal were detailed in the Administration's paper. The main reason was to avoid providing an opportunity for the maintenance payer and payee to blame each other in court as this would prolong and aggravate the conflict between them. In addition, what would amount to abuse might be very subjective. A sensitive maintenance payee might feel hurt if her application for an AIO under such a circumstance was not supported by the court. As it was difficult to define what would amount to abuse and it might vary among individuals, the Administration considered that the making of an AIO should be confined to circumstances where there was doubt about a maintenance payer's willingness to make full and punctual payment.

24. Miss CHOY So-yuk said that as an AIO might be issued if the court was satisfied that there were reasonable grounds to believe that a maintenance payer would not make full and punctual payment in compliance with the maintenance order, the same principle could be applied to cases where a maintenance payee might be humiliated by the maintenance payer. Therefore, an AIO might be issued if the court had reasonable grounds to believe that the maintenance payee would be abused by the maintenance payer when collecting or demanding payment.

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25. Government Counsel said that under normal circumstances the court, on the application of the Legal Aid Department or counsel representing the maintenance payee, would specify in the court order that maintenance payment should be made through a bank if the relationship between the maintenance payer and payee was bad. This was an effective way to avoid possible conflicts between the two parties. She said that if an application for an attachment of income order was made on the proposed ground that the maintenance payee would be abused, the application had to be accompanied by an affidavit stating the details of the unpleasant experience of the maintenance payee in collecting maintenance payment and the maintenance payer might file affidavit containing evidence to defend himself. A report from the Social Welfare Department or an assessment from a psychologist might also be required in deciding whether the maintenance payee had been abused before an AIO would be issued. Therefore, the time needed for making an AIO could be very long in some cases. She pointed out that the WG had discussed the matter in detail and considered that the issue of an AIO should be confined to circumstances where there was doubt about a maintenance payer's willingness to make full and punctual payment. In reply to Miss CHOY So-yuk, PAS(HA) said that applications for the court to order maintenance payment to be made through a bank were rarely refused.

26. Miss CHAN Yuen-han asked how the Administration would handle circumstances where a maintenance payer would abuse the payee while he would make full and punctual payment in compliance with the maintenance order. PAS(HA) said that the maintenance payee might apply to the court to order the maintenance payment to be made through a bank. If the maintenance payer failed to comply with the court order to make payment through a bank, the maintenance payee might apply for a judgment summons against him to pursue the maintenance arrears.

27. As the issues of concern to women groups and other relevant organisations were outside the scope of the Bill, members agreed that the Bills Committee would not invite deputations to give views on the Bill. As the Panel on Home Affairs would monitor the implementation of the various improvement measures, it would be more appropriate for the Panel to invite them to present their views on the overall arrangements in connection with maintenance payment.

II. Date of next meeting

28. The next meeting would be held on 18 June 2001 at 2:30 pm to continue discussion with the Administration and proceed with clause-by-clause examination of the Bill. As members expressed support for the Bill in general, the Chairman said that the Bills Committee would report its deliberations to the House Committee on 22 June 2001 recommending resumption of the Second Reading debate on the Bill on either 4 or 11 July 2001.

29. The meeting ended at 6:15 pm.

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Legislative Council Secretariat
18 September 2001