

立法會
Legislative Council

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seen by the Administration)

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

**Minutes of the 1st meeting
held on Thursday, 17 May 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 WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Member Absent : Dr Hon TANG Siu-tong, JP

Public Officers Attending : Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs

Ms Phyllis 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. Election of Chairman

Mr Albert HO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

Briefing by the Administration

2. Principal Assistant Secretary for Home Affairs (PAS(HA)) briefed members on the objective of the Bill, which sought to amend the provisions of three ordinances in relation to the making of attachment of income orders (AIOs). He said that in order to address the difficulties encountered by maintenance payees in collecting and enforcing maintenance payments, an Inter-departmental Working Group (WG) was formed in 1999, one year after the implementation of the Attachment of Income Order Scheme (the AIO Scheme), to review the law and administrative measures affecting maintenance payees. The recommendations of the WG were published in a report which was presented to the LegCo Panel on Home Affairs in June 2000. The Bill sought to implement some of the recommendations in respect of the AIO Scheme.

3. PAS(HA) pointed out that the court had only issued a small number of AIOs since the implementation of the AIO Scheme in 1998. The WG considered that this was mainly due to the restriction that an AIO could only be made where a maintenance payer had failed to make maintenance payment without reasonable excuse. Under the Bill, the court might make an AIO in circumstances where there were reasonable grounds to believe that the payer would not make full and punctual payment in compliance with the maintenance order. As the privacy of a maintenance payer would inevitably be violated to some extent if an AIO was in force in respect of him, the Administration considered it inappropriate to provide for an AIO to be issued for each maintenance order since some maintenance payers were responsible and punctual in making payments. He also pointed out that the Labour Advisory Board had expressed concern that it might create a considerable amount of work for employers if they had to execute a lot of AIOs issued by the court, and employers might involuntarily be involved in the personal affairs of employees.

4. PAS(HA) further said that the existing elaborate procedures laid down in the Attachment of Income Order Rules (the AIO Rules) were too rigid and had in some cases protracted the time taken to make an AIO. In view of this, the Bill proposed that the court be empowered to dispense with or relax any procedure or abridge any time

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limit currently specified in the AIO Rules where the court was satisfied that it was fair and reasonable to do so in the circumstances of the case.

Questions from members

5. Miss CHAN Yuen-han said that when the Council was first consulted on this issue several years ago, members predicted that the current problems would occur. In her view, the setting up of a maintenance board to collect and enforce maintenance payments would be the best solution to the problem. She suggested that parties concerned should be invited to give views on the proposed arrangements under the Bill.

6. The Chairman recalled that members proposed to set up a maintenance board in 1996, but the Administration did not accept the proposal. The issue was subsequently followed up by the Home Affairs Panel. He reminded members that the Bills Committee should focus its discussion on the Bill whereas the proposal of setting up a maintenance board should be pursued in the Panel discussions.

7. Referring to paragraph 1(g) of Annex B to the Administration's paper (Annex B), Ms Audrey EU pointed out that under normal circumstances, Government departments would not entertain requests from the public for access to personal information of individuals. She asked whether the Administration would explore ways to assist maintenance payees to find the income source. Referring to clause 2(1A)(a) of the Bill, she questioned how the payer's past record in discharging his reasonable financial obligation towards the designated payee could be assessed before the issue of any maintenance order. She also asked about the difference between designated payee (指定受款人) and specified payee (指明受款人).

8. PAS(HA) said that an income source might be an employer or a tenant who would deduct the maintenance payment from the maintenance payer's income and then pay the deductions direct to the maintenance payee. It was the responsibility of the maintenance payer to notify the court of the income source, and presentation of false information would constitute a criminal offence. He explained that the purpose of the proposed arrangement in paragraph 1(g) of Annex B was to provide an additional way to obtain the address of a maintenance payer so that the judgment summons could be served on him personally. He pointed out that a maintenance payer was currently required to notify the payee of any change in address within 14 days, and failure to do so would constitute a criminal offence. Such offences could be reported to the Police at any police stations.

9. PAS(HA) said that under normal circumstances, the provision of personal information of individuals to the public by Government departments might contravene the Personal Data (Privacy) Ordinance (Cap. 486). However, exemptions to release such information for the purpose of recovering maintenance arrears were provided under sections 58(1)(d) and 58(2) of that Ordinance. In view of this, the Administration had prepared a standard letter to facilitate solicitors in private practice to obtain addresses of maintenance payers from Government departments and had

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requested the Law Society of Hong Kong to ask its members to make use of the standard letter for similar requests in future.

10. In regard to the payer's past record in discharging financial obligation towards the designated payee, PAS(HA) said that it might mean the money paid to the spouse for family expenditure before the couple was separated or divorced. He stressed that the past record in discharging financial obligation was only one of the elements to be considered by the court in deciding whether an AIO should be issued. He added that there seemed to be no circumstances where the designated payee and the specified payee would be two different persons.

11. Ms Audrey EU considered that the designated payee and the specified payee might not be the same person on some occasions because the payee named in an AIO might not necessarily be the actual beneficiary. For example, a child who was the beneficiary in a maintenance order might receive the maintenance payment through his mother; or a divorcee might receive the maintenance payment through a solicitor or social worker in order to avoid further contacts with the divorced partner. She asked the Administration to further consider the issue and review the wording of the definition of designated payee and specified payee where applicable.

12. In reply to a further question asked by Ms Audrey EU, PAS(HA) said that only two of the recommendations made by the WG required legislative amendments before implementation, one of which was effected in the Bill. He added that all the recommendations as set out in Annex B had been accepted by the Administration. Some of them had been implemented while some were being worked out and would be implemented in due course.

13. Ms Cyd HO suggested that a review should be conducted a certain period after the enactment of the Bill so that the effectiveness of the AIO Scheme could be further assessed. She pointed out that many parties concerned were still of the view that the setting up of a maintenance board would be the best solution to the problems now encountered by maintenance payees. She asked about the reasons for having only issued 35 AIOs while the court had issued 904 judgment summonses in connection with maintenance arrears. She also asked about the possible effects on the number of applications for AIO after the enactment of the Bill and requested the Administration to provide information on how the remaining 869 cases were settled.

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14. PAS(HA) said that in 1999, the WG reviewed not only the AIO Scheme but also the proposal of setting up a maintenance board. The reasons why the Administration was not in favour of such proposal were detailed in the report. The WG was still functioning after the review and was continuing its efforts to improve the arrangements in respect of maintenance. He explained that an AIO might not be invoked in each case where a judgment summons had been served, e.g. a maintenance payee might not apply for an AIO if the maintenance payer was a self-employed person such as taxi driver or hawker. He pointed out that it was not possible at this stage to estimate the increase in the number of applications for AIOs after the

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Adm enactment of the Bill. He undertook to liaise with the Judiciary and provide the information on past cases requested by Ms Cyd HO, if available.

15. Miss CHOY So-yuk expressed reservation about the Bill because she considered that the problem could not be solved by simply amending the existing legal procedures. In her view, the setting up of a maintenance board would be the most desirable solution. She pointed out that some maintenance payers were self-employed; some did not notify the maintenance payees of their change in employment; and some maintenance payees feared to enforce maintenance payments after having been threatened or exposed to physical violence by the maintenance payers. She said that these were common causes for maintenance arrears and asked how the Administration would handle these situations.

16. PAS(HA) stressed that the Administration did not consider that the AIO Scheme would be a complete solution to all the problems. Therefore, a series of improvement measures as outlined in Annex B was suggested by the WG to address the existing problems. He pointed out that a maintenance board would unlikely be able to bring to maintenance payers and the public any significant benefits over and above those which could be achieved by improving the existing system. Certain problems which could not be solved under the existing system, e.g. maintenance payers could not be located or could not afford to pay, would still exist even if there was a maintenance board. Provisions to deal with threats or physical violence which might arise from the enforcement of maintenance payments were not included in the Bill because these actions would be subject to legal sanctions under other ordinances. Under the existing system, the court might order the maintenance payment to be made direct into a payee's bank account in order to avoid possible hardship to be faced by the payee when enforcing payment. As some parties concerned expressed the view that banks were not authoritative bodies, the WG suggested that the court might also order the maintenance payment to be made into the court if the payee so wished.

17. Mr LAW Chi-kwong considered that the Bill would not bring about significant improvements to the existing system, however, it might be able to benefit a small group of maintenance payees. He pointed out that as the money paid to a spouse for family expenditure would normally be in cash form and without proper records, he asked about the criteria in deciding whether there were reasonable grounds to believe that the maintenance payer would not make full and punctual payment in compliance with the maintenance order.

18. Government Counsel said that after a consequential amendment to be made to the AIO Rules, a maintenance payee, in applying for an AIO, would be required to provide in an affidavit the reasons and evidence, if any, for the court to consider whether an AIO should be issued. PAS(HA) added that the criterion of "reasonable grounds to believe" was a very relaxed approach. The affidavit/affirmation filed by the maintenance payee would constitute "reasonable grounds" and it would then be up to the maintenance payer to produce evidence to refute such "reasonable grounds".

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19. Senior Assistant Legal Adviser (SALA) held the view that in the affidavit, the maintenance payee had the responsibility to provide relevant information to support her application. For example, she might introduce evidence to prove that the payer had defaulted in payments in the past and/or provide reasons to support her belief that the payer would not make full and punctual payment in compliance with the maintenance order. SALA added that the "past record" to be considered by the court in the issue of an AIO might not necessarily relate to maintenance payment alone. It could also mean the past conduct of a payer in discharging his financial obligations towards the payee before any maintenance order was made, e.g. whether the payer had evaded paying family expenditure to his spouse in the past.

20. Ms Cyd HO asked whether the Administration would consider using more relaxed wordings in the relevant provisions of the Bill in order to facilitate the applications for AIOs. PAS(HA) said that the currently proposed wordings already provided very relaxed circumstances in which a maintenance payee might apply for an AIO. The criterion of "reasonable grounds to believe" would provide objective conditions for the court to decide whether an AIO should be issued. If a payer disagreed with the statement made by the payee in the affidavit, he might raise a defence by introducing evidence. PAS(HA) said that he would welcome any suggestion from members on wordings which could better achieve the policy objective.

21. Ms Audrey EU enquired whether there was a definition of "income". She pointed out that some maintenance payers, who were construction workers or taxi drivers, might not have steady income and the income might be paid to them indirectly through other parties. As such, these payers might not be able to comply with the maintenance order to make full and punctual payment every month. She asked whether the inability to comply with the maintenance order under such circumstances would fall under clause (1A) of the Bill.

22. PAS(HA) said that the Administration had discussed the definition of "income" in detail. As "income" was already explained in a number of past court cases, the Administration considered it inappropriate to introduce a separate definition under the Bill as it might create unnecessary restrictions. He responded that inability to pay would be a relevant factor under clause (1A) of the Bill as the policy objective was to protect the interests of maintenance payees in respect of maintenance payments. However, it would eventually be up to the court to decide whether an AIO should be issued after having considered the particular circumstances of the case.

23. Ms Audrey EU expressed concern that an AIO might be issued against a maintenance payer if he failed to make maintenance payments owing to his inability to do so, e.g. unstable income. The Chairman suggested that this issue should be further discussed at future meetings.

24. The Chairman pointed out that as the relationship between a divorced couple was usually bad, a lot of maintenance payees encountered hardship when collecting payments from maintenance payers. There were circumstances where a maintenance

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payee had reasonable grounds to believe that she might be abused by the payer when demanding payments. In order to minimise the hardship, the Chairman suggested that the criteria for the issue of an AIO should be further relaxed by adding the above-mentioned circumstances. Mr LAW Chi-kwong shared the view of the Chairman. He asked the Administration to consider whether an assessment report prepared by a social worker who followed through the case might be of any use to the court in deciding the issue of an AIO. PAS(HA) undertook to consider the suggestion.

25. Miss CHAN Yuen-han also expressed support for the suggestion made by the Chairman. She pointed out that one of the common problems faced by maintenance payees was the difficulty in proving that the maintenance payers were employed with income capable of being attached. She cited as an example that the chance of the issue of an AIO was rare if the maintenance payer was self-employed or working in the construction industry.

26. In reply to the Chairman, PAS(HA) said that there was currently no requirement for a maintenance payer to notify the maintenance payee of any change in employment because recovery action could be taken against the defaulting payer as long as his address was available. However, the payer had the responsibility to notify the payee of any increase in income and the new income source if the amount specified in an AIO was less than that specified in the maintenance order and the payee could submit a fresh application for a new AIO.

27. As the existing AIO would become invalid if the payer changed employment, the Chairman opined that the payer should be required to notify not only the court but also the payee of any change in employment. He urged the Administration to establish a mechanism whereby the existing AIO could be varied or a new AIO could be issued automatically by the court upon receipt of the notification of change without the need for a fresh application to be made by the maintenance payee. Ms LI Fung-ying and Ms Cyd HO shared his view.

28. SALA pointed out that according to the AIO Rules, the specified income source, which might be the employer of the maintenance payer, was required to notify the court by a form specified in the Rules that his company would cease to be an income source. In such a case, the variation of an AIO could be initiated by either the payer or the payee.

29. Mr LAW Chi-kwong enquired whether the subsidiary legislation could be amended to require maintenance payers to notify the court of any change in employment such that the existing AIO could be varied by the court automatically. PAS(HA) undertook to consider the proposal. However, he pointed out that the new income source should at least be given an opportunity to verify the particulars of the AIO to be directed at him and to make representation, if any.

30. Miss CHOY So-yuk asked how the Administration would assist those maintenance payees who were abused by the maintenance payers or in cases where the

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AIO Scheme could not be invoked. PAS(HA) replied that maintenance payees who failed to receive maintenance payments and suffered financial hardship might apply for legal aid to institute legal proceedings to recover the arrears. Referral procedures were streamlined by the Social Welfare Department (SWD) so that single-parent families would be able to obtain timely counselling and family services.

31. As difficulties were usually encountered in serving judgment summonses on maintenance payers personally, the Chairman asked whether the Immigration Department (ImmD) would be able to assist in this aspect when the maintenance payers passed through immigration control points on departure from the territory.

32. PAS(HA) said that the WG had proposed similar arrangements. He invited members to note that the requirement for the first judgment summons to be served personally would be retained. In the second service, the court might order another mode of delivery or make an order for the commitment of the maintenance payer if the court considered it to be fair and reasonable. If a maintenance payer tried to evade the service, the court might also make an arrest order to bring the maintenance payer before the court. The court might make an order prohibiting the maintenance payer from leaving the territory if it had reasonable ground to believe that a court order to be served personally on the maintenance payer might not be able to secure his attendance.

33. The Chairman considered it difficult for the court to introduce evidence to support its belief that the maintenance payer would not appear before the court even if a court order was served on him personally. In his view, the maintenance payer should be informed of the existence of the judgment summons before a committal order, arrest order or prohibition order was made against him. In achieving this, the maintenance payer might be required to sign a letter of acknowledgement at the immigration control point on his departure from the territory to signify that he would collect the judgment summons at a specified location before a specified time. This course of action could avoid doing him an injustice if he genuinely did not receive the summons before.

34. Miss CHOY So-yuk shared the view of the Chairman. She pointed out that there might be difficulties in serving a judgment summons to a maintenance payer even in the first service if the payer's latest address was not known. She asked whether ImmD could provide assistance in cases where judgment summonses could not be served on the maintenance payers personally after a certain period of time; or where maintenance payments were not received by maintenance payees in circumstances whereby the AIO Scheme could not be invoked. She also asked whether SWD, or any other Government department, could take up the coordination role in recovering arrears for maintenance payees.

35. PAS(HA) pointed out that the notification given by ImmD to a maintenance payer who had evaded the service of the judgment summons might not serve any purpose. Further, such notification would not be of any use if it could not reach the maintenance payer well before the date of court hearing of the judgment summons. PAS(HA) considered that if such notification should have the intended effect of making

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the maintenance payer more ready to accept the service of the judgment summons, the same effect could be achieved by sending him a notification. He also pointed out that if a maintenance payee wished to stop the maintenance payer at immigration control point, she could apply for a prohibition order. PAS(HA) further said that court bailiffs might also serve judgment summonses for maintenance payees who were not legally represented. He explained that SWD could not take recovery actions on behalf of maintenance payees. In any case, the payees must prepare an affidavit and attend court. Since an affidavit was an important document to be considered by the court in deciding whether an AIO should be issued, it would be in the maintenance payee's interests that the affidavit should be prepared with the assistance of legal professional.

36. PAS(HA) further said that if an applicant for Comprehensive Social Security Assistance (CSSA) already had a maintenance order in her favour but had been unable to receive maintenance payments, SWD would assist her to search for the address of the maintenance payer from other Government departments. If SWD considered that the maintenance payee should take legal actions to recover the maintenance arrears, SWD would forward the relevant information of the case to the Legal Aid Department. If the Legal Aid Department decided to offer legal aid to the maintenance payee, she would be invited to attend an interview at an appointed time during which all formalities and procedures in respect of the application for legal aid would be completed. This arrangement would save maintenance payees a lot of time and effort.

Adm 37. Ms Cyd HO requested the Administration to provide members with an information paper setting out the details and progress of the implementation of the WG's recommendations. Members agreed that the information paper should also be given to deputations before they were invited to give views on the Bill. Ms Cyd HO added that there had been positive feedback from users after the synchronisation of the procedures in processing applications for CSSA and legal aid.

Clerk 38. In response to Mr LAW Chi-kwong, the Chairman informed the meeting that the Law Society of Hong Kong had expressed support for the Bill and a copy of its letter would be provided to members for their reference.

(Post-meeting note : The letter was circulated to members vide LC Paper No. CB(2)1586/00-01 on 18 May 2001.)

Clerk 39. At the request of PAS(HA), the Clerk would provide a list of issues raised by members at the meeting for the Administration's consideration and response.

III. Date of next meetings

40. Members agreed that two more meetings be scheduled for 4 June 2001 at 4:30 pm and 18 June 2001 at 2:30 pm to continue discussion with the Administration and to meet with deputations respectively.

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41. The meeting ended at 6:35 pm.

Legislative Council Secretariat

18 September 2001