

立法會
Legislative Council

LC Paper No. CB(2)2305/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/BC/14/00

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

**Minutes of the 3rd meeting
held on Monday, 18 June 2001 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Albert HO Chun-yan (Chairman)
Hon Cyd HO Sau-lan
Hon CHAN Yuen-han
Hon LAW Chi-kwong, JP
Hon LI Fung-ying, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon CHOY So-yuk
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
- Mrs Nina TAM
Assistant Principal Legal Aid Counsel
- Ms Pauline P L LO
Legal Aid 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 No. CB(2)1847/00-01(01))

The Chairman informed the meeting that submissions from women groups and concerned parties expressing their views on the arrangements in respect of maintenance payment and attachment of income order (AIO) were received by some members before the meeting. Members agreed that their views, where relevant, would be discussed during the clause by clause examination of the Bill.

2. Principal Assistant Secretary for Home Affairs (PAS(HA)) briefed members on the various judgment summons procedures as set out in tables (A) to (C) of the Annex to the Administration's paper. He added that it normally took two to four months before a hearing could be scheduled. However, the actual waiting time would depend on the workload of the court.

3. Ms LI Fung-ying asked whether a time limit could be set for scheduling hearing dates for cases in connection with maintenance arrears. Ms Cyd HO suggested that the Judiciary might consider setting different time limits for different types of cases. PAS(HA) undertook to convey members' suggestions to the Judiciary for consideration. The Chairman pointed out that the waiting time for a hearing to be scheduled for an adjourned case would be even longer. He asked the Administration to provide an information brief in this regard for members' reference.

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4. Ms Audrey EU pointed out that as the time slot assigned for the hearing of a case in connection with maintenance arrears was usually short and a maintenance payer would in most cases refute the statement made by the maintenance payee, it was therefore common that the court would not be able to conclude a case at the first hearing. Normally another hearing would be scheduled for the adjourned case in a few more months' time. As judicial procedures were involved, the Chairman asked the Administration to convey members' concern to the Judiciary Administrator and suggested that the issue be followed up by the Panel on Administration of Justice and Legal Services.

5. Members noted that the Administration had accepted their proposal to require a

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maintenance payer who had an AIO issued against him to inform the maintenance payee of his change in employment so that a new AIO could be issued as soon as possible. In reply to the Chairman, PAS(HA) said that the Chief Justice would be empowered to enforce the Attachment of Income Order Rules (the AIO Rules). Those who failed to comply with the AIO Rules made by the Chief Justice would commit a criminal offence and would be liable to a fine at level 2, which amounted to \$5,000, and one month's imprisonment. He added that the Administration expected to complete the drafting of the amendments to the AIO Rules within a short time. The target was to gazette the amendment rules in September 2001 with a view to having their undergoing negative vetting by the Council shortly after the commencement of the next legislative session.

6. Ms Audrey EU pointed out that fines would only benefit the Government and considered that it was more important to compensate the maintenance payee. PAS(HA) said that the Inter-departmental Working Group had considered imposing a surcharge on maintenance arrears. However, the Hong Kong Bar Association did not support the idea as it considered that a surcharge would amount to a punitive measure which was against the philosophy of family law. Instead, it suggested to introduce interest on arrears. The Administration would draw up a revised proposal for consultation with the Hong Kong Bar Association and the Law Society of Hong Kong in the next two months.

7. The Chairman pointed out that the use of judgment summons had been discontinued in the United Kingdom and a review on the judgment summons procedure was being conducted. He asked whether the judgment summons procedure currently adopted by Hong Kong should also be changed. PAS(HA) said that the Administration was aware of the recent ruling by the Court of Appeal of England concerning the judgment summons procedure. According to legal advice, the ruling did not affect the judgment summons procedures in Hong Kong.

II. Clause by clause examination of the Bill

Clause 1 – Short title and commencement

8. PAS(HA) said that the Administration planned to bring this Ordinance, together with the amended AIO Rules, into operation in November 2001.

Guardianship of Minors Ordinance (Cap. 13)

Clause 2 – Attachment of income to satisfy order

9. Pursuant to the Chairman's request, Senior Assistant Legal Adviser (SALA) summarized the written representations of women groups and concern groups. SALA reported that most representations contained views in common. They considered that a maintenance payer should be required to notify the maintenance

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payee prior to his change in employment and the payer should be responsible to apply for a new AIO. The Chairman invited the women groups and concern groups to note that members had made such a proposal at the first previous meeting and the proposal had already been accepted by the Administration.

10. SALA also reported that the representations suggested that a working committee should be set up to render assistance in the recovery of maintenance arrears through communications with certain governmental organizations such as the Mandatory Provident Fund Schemes Authority and the Inland Revenue Department. In addition, the representations opined that the procedure for the issue of a prohibition order to stop a maintenance payer from leaving the territory at immigration check points should be simplified and expedited. As to the drafting of the Bill, the only point the representations made was that the meaning of the terms “without reasonable excuse” and “reasonable grounds” was not clear and specific enough.

11. Government Counsel (GC) said that the terms followed that adopted in the primary legislation. She explained that the term “without reasonable excuse” would provide a maintenance payer an opportunity to explain before the court whether his default in payment was due to justified reasons such as unemployment, sickness or departure from the territory, etc. The term “reasonable grounds” would allow a maintenance payee to give reasons or introduce evidence to the court to support her belief that the maintenance payer would not make full and punctual payment in compliance with the maintenance order.

12. In reply to a query raised by Ms Audrey EU, PAS(HA) clarified that a “designated payee” and a “specified payee” might be two different persons on some occasions. He pointed out that a specified payee named under an AIO might be the Legal Aid Department (LAD) if the case was assisted by LAD.

13. Ms Audrey EU asked whether an AIO could be issued on the ground that the relationship between a maintenance payer and the payee was bad. The Chairman said that the Administration had been requested at an earlier meeting to consider adding this as one of the circumstances for the issue of an AIO. The proposal was subsequently not pursued because any possible conflicts between a maintenance payer and the payee could be avoided effectively by ordering the maintenance to be paid through a bank.

14. In response to Ms Audrey EU, PAS(HA) said that the meaning of “financial obligation” under (1A)(a) in paragraph (a) of clause 2 included the money to be paid to a spouse for family expenditure in circumstances where there was no maintenance order or AIO in force. Ms EU asked whether the Administration would consider replacing the term “financial obligation” with “maintenance”. GC explained that the natural meaning of “financial obligation” included the provision of maintenance to a family. Members generally accepted the term “financial obligation” and considered that no amendment was necessary. Ms EU agreed.

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15. Ms Audrey EU pointed out that two different terms “past record” and “past conduct” were used under (1A)(a) and (b) in paragraph (a) of clause 2 respectively. In order to be consistent and more extensive, members agreed that both terms should be replaced by “past record and conduct” wherever they appeared in the Bill. PAS(HA) undertook to give notice of such Committee Stage amendments on or before 22 June 2001 to effect the change.

16. The Chairman asked what procedures the court might dispense with or relax under (6A) in paragraph (e) of clause 2. PAS(HA) cited as an example that the court might omit the step to obtain the information about a maintenance payer's salary level and income source if such information was already available. By so doing, the time for processing an AIO application could be reduced. He stressed that the court would do so only if it considered fair and reasonable in the circumstances of the case. GC said that the court could only dispense with or relax those procedures or time limit that had been specified in the Attachment of Income Order Rules, such as the provision of information or service of documents. Such dispensation or relaxation would not deprive the right of a maintenance payer to explain before court in respect of the case.

17. Members noted that clauses 3 and 4 of the Bill made similar amendments to the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192) respectively.

18. Ms Audrey EU asked why the requirement for a maintenance payer to notify his change in address was stipulated under the primary legislation whereas the requirement in respect of change in employment would be under the subsidiary legislation. GC explained that the requirement in respect of change in address stipulated under the three Ordinances in the Bill was not solely applicable to maintenance payment under an AIO. However, as the requirement in respect of change in employment applied to AIO only, it was therefore more appropriate to include it under the AIO Rules. PAS(HA) said that there were other penal provisions under the AIO Rules against a maintenance payer's failure to submit a statement of means or provision of a false statement. Such actions would constitute a criminal offence.

19. The Chairman invited the Administration to carefully consider the views of the women groups and concern groups and to put in place the other improvement measures as soon as practicable. He said that the Panel on Home Affairs would monitor the implementation progress and would follow up the proposal on the setting up of a maintenance board.

20. Members expressed support for the Bill in general and noted that the Administration had given notice to resume the Second Reading debate on the Bill on 4 July 2001.

(Post-meeting note : The CSAs were circulated to members on 22 June 2001 vide LC Paper No. CB(2)1917/00-01, and the Bill was passed by the Council

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on 4 July 2001.)

III. Any other business

21. There being no other business, the meeting ended at 3:45 pm.

Legislative Council Secretariat
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