

**Improvements to law and administrative measures
affecting maintenance payees**

Introduction

The purpose of this paper is to inform the Bills Committee for the Attachment of Income Order (Amendment) Bill 2001 (“the Bill”) of the progress in implementing the recommendations made by an Inter-departmental Working Group (“WG”) in May 2000 to improve the law and administrative measures affecting divorcees and children eligible for maintenance.

Background

2. The Bill was presented to the Legislative Council vide LegCo Brief reference HAB/CR/1/19/95 Pt. 3 dated 21 March 2001. At Annex B to the Brief is a summary of the recommendations made by the WG and accepted by the Administration in May 2000. At the first meeting of the Bills Committee’s meeting held on 17 May 2001, Members asked for a progress report on the implementation of the recommendations.

3. The WG’s report was circulated to all LegCo Members in May 2000. A copy is at Annex for ease of reference.

Progress in implementing the WG’s recommendations

(a) To relax the circumstances for the issue of Attachment of Income Orders (Paras. 4.10 and 4.11 of WG’s report)

4. This is the subject of the Bill, which was introduced into LegCo on 4 April 2001.

(b) To relax the requirement for judgement summonses to be served personally and to enable the court to order payment of maintenance arrears accrued up to the date of court hearing instead of up to the date of application for judgement summonses at present (Paras. 4.20 and 4.21 of WG's report)

5. Implementation of the recommendation requires amendments to the Matrimonial Causes Rules and District Court Rules. Drafting of the Amendment Rules has reached an advanced stage. We expect to be able to consult the Hong Kong Bar Association and the Law Society of Hong Kong on the finalized draft within the next couple of months.

(c) Court Bailiffs to serve judgement summonses for maintenance payees who are not legally represented (Para. 4.24 of WG's report)

6. NGOs were informed of the availability of the service in May 2000.

(d) The court to order that maintenance be paid into court in appropriate cases (Para. 4.32 of WG's report)

7. Professional bodies and NGOs were informed, in May 2000, of the Judiciary Administrator's advice that the court could specify, in appropriate cases, the mode of payment (including payment be made into court) after taking into account the wishes of the parties involved and the circumstances surrounding the cases concerned.

(e) To empower the court to impose a surcharge against defaulting maintenance payers (Para. 4.33 of WG's report)

8. The proposal to empower the court to impose surcharge on maintenance arrears was included in earlier drafts of the Bill. When the two professional bodies were consulted on the draft Bill, the Bar Association expressed concern on the ground that the proposed surcharge amounted to a punitive measure, which was against the philosophy of family law. The Association suggested to introduce, instead, interest on arrears, to be awarded at the discretion of the judge hearing the

judgement summons.

9. Earlier, HAB did not recommend the introduction of interest for two reasons. First, the English Law Reform Commission in 1976 did not favour giving the courts the additional power to award interest and the Hong Kong Law Reform Commission in 1984, apparently following its English counterpart, considered that the existing law not to award interest in matrimonial cases should remain unchanged. Second, the calculation of interest may be too complicated for some maintenance payees who are not legally represented.

10. Nevertheless, in the light of the Bar Association's views, HAB has been reconsidering the proposal to introduce interest instead of surcharge. We expect to be able to draw up a revised proposal for consultation with the two professional bodies within the next couple of months.

(f) To inform NGOs and professional bodies that cases of maintenance payers failing to notify the maintenance payees of changes of address can be reported to the police station nearest to the maintenance payer's last know address (Para. 4.36 of WG's report)

11. The information was passed to NGOs and professional bodies in May 2000. The Hong Kong Police Force has since advised that such cases can be reported to any police station.

(g) To request the Law Society to inform its members that they can, with the use of a standard letter, request the Immigration Department, Transport Department and Housing Department to search their records for addresses of maintenance payers against whom legal actions will be taken to sue for arrears in maintenance (Para. 4.38 of WG's report)

12. The Law Society confirmed in April 2000 that it had circulated the information, together with the draft standard letter prepared by HAB, to its members. HAB also passed similar information to NGOs in May 2000.

(h) To conduct a pilot scheme to synchronize the procedures in processing applications for Comprehensive Social Security Assistance and legal aid (Paras. 4.49 to 4.51 of WG's report)

13. Under the revised procedure, made permanent in September 2000, applicants for CSSA who require legal aid to sue for maintenance arrears do not have to visit Legal Aid Department ("LAD") until they receive letters from LAD. Social Welfare Department ("SWD"), if it considers there is a case for a CSSA recipient to sue for maintenance arrears, will refer the case to LAD together with the necessary information. Where LAD decides to offer legal aid, it will invite the CSSA recipient to attend LAD at appointed time, when he will complete the application procedures and be issued an Offer of Legal Aid for his acceptance on the date of the appointment as far as practicable.

14. For CSSA applicants who have not yet applied for divorce or maintenance order, the procedure described in the preceding paragraph cannot be adopted. Such cases, much more complicated than recovery of maintenance arrears, have to be assessed by lawyers as to whether they pass the merit test for legal aid. SWD staff, who do not possess legal training, cannot be expected to provide all the relevant information in the referral to LAD. Furthermore, time is an important factor in some such cases and it is in the clients' interest that they should receive legal advice as soon as possible. SWD, therefore, would advise such clients to contact LAD as soon as possible, if they have not already done so. From experience, most such clients have already approached LAD when they apply for CSSA.

(i) Social Welfare Department to streamline the procedures in referring single-parent families to obtain timely counseling and family services (Para. 4.54 of WG's report)

15. From April 2000 onwards, SWD's Social Security Field Units have been using an improved referral form to facilitate early referral of single-parent families to Family Service Centres. The new form contains more information than the previous one so that clients do not have to repeat their sad stories when they actually arrive at the Centres.

A new leaflet has also been introduced to inform clients of the services available to single-parent families and where to obtain them.

(j) To mount publicity and public education measures on matters relating to maintenance (Paras. 4.57 and 4.58 of WG's report)

16. HAB and SWD have produced display boards and information pamphlets to publicize the services available to single-parent families. During the period from June 2000 to March 2001, they were displayed and distributed in about 30 functions organized by SWD. The pamphlets – and also information booklets explaining the detailed procedure in the making of an Attachment Income Order – are also distributed through Judiciary, Home Affairs Department, SWD and LAD. Similar measures will continue in future.

17. During the financial year ending 31 March 2001, grants totaling \$340,000 were awarded to ten NGOs for conducting community involvement projects. HAB will soon invite applications for projects to be held in the year 2001-02.

Advice sought

18. This paper will be presented to the Bills Committee at its meeting to be held on 4 June 2001.

Home Affairs Bureau
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