

OUR REF. : HAB/CR/1/19/95 IV
YOUR REF :

14 June 2001

Ms Doris Chan,
Clerk to Bills Committee,
Legislative Council Secretariat,
8 Jackson Road,
Hong Kong.

Dear Ms Chan,

**Bills Committee
on Attachment of Income Order (Amendment) Bill 2001**

I am writing to provide the information requested by the Bills Committee, at the meeting held on 4 June 2001, on prohibition orders (“PO”), judgement summonses (“JS”) and reports made to the Police concerning maintenance payers’ failure to notify change of address.

Prohibition orders

2. The Judiciary does not keep any official statistics on the number of applications for POs and the number of POs issued. However, according to the Family Court Registry, about 30 POs are issued each month and to the best of the memory of the staff concerned, applications are seldom, if ever, refused. While the available record does not show how many of the 30 POs issued relate to the recovery of maintenance arrears, the staff concerned observe that most POs issued by the Family Court relate to the recovery of costs in matrimonial proceedings.

Judgement summonses

3. JSs are served by the applicants or their solicitors. While no record is available, the Family Court Registry estimates, on the basis of the hearings held, that the rate of serving the first JS successfully is over 95%. For the remaining 5% or so, the JSs are withdrawn because either the parties concerned have agreed

to settle or the JSs have not been served. The ratio between the two types of withdrawal is not known since the applicants do not have to inform the court of the reason for the withdrawal.

4. At the last meeting, Members asked for a comparison of the time taken by the existing JS procedure with that taken by the new procedure under consideration by the Administration. This is shown in the tables at Annex. I wish to emphasize that: -

- (a) the hearing date set by the court depends on the court's workload when the court issues a JS. The Family Court reserves special slots for hearing JSs in connection with maintenance arrears. The reason for the current waiting time is that for the first five months this year, there was a total of 306 JSs court hearings as compared with 468 for the whole of 2000; and
- (b) as the draft amendments to the JS procedure are still subject to further comments by the bureaux/departments concerned, the actions required under the finalized revised procedure may not be 100% the same as shown in tables (b) and (c) of Annex.

Reports on maintenance payers' failure to notify change of address

5. The Hong Kong Police Force have advised me that instructions on the procedures to deal with such cases have been disseminated to police stations throughout the Force. To date, they are not aware of any reports having been received or processed under the relevant legislation.

Yours sincerely,

(NG Hon-wah)
for Secretary for Home Affairs

Existing judgment summons procedure

<i>Week</i>	<i>Course of action (A)</i>
1	(A)1: The maintenance payee , finding out that she is not receiving payments from the maintenance payer, goes to see her legal representative to take legal proceedings to recover the arrears.
3	(A)2: With the help of the legal representative (if any), an affidavit/affirmation is produced, stating that the maintenance payee is not receiving payments or is receiving an amount less than the amount specified in the maintenance order.
3	(A)3: To sue for arrears of maintenance, the maintenance payee (or her legal representative, if any) files an ex parte application for leave to issue a judgment summons (JS).
4 – 6	(A)4: Usually the maintenance payee (and her legal representative, if any) does not have to attend court when it considers the application. After considering the application, the court will grant leave to issue a JS that requires the maintenance payer to appear in front of court and be examined on oath/upon affirmation as to his means. A JS will then be issued and a date be fixed for the hearing.
4 – 14	(A)5: The JS, in the format of Form 23 under the Matrimonial Causes Rules, will be served on the maintenance payer personally not less than 10 clear days before the hearing. At the time of service, there shall be paid or tendered to the maintenance payer a sum reasonably sufficient to cover his expenses in travelling to and from the court at which he is summoned to appear. If the maintenance payee is legally represented, the legal representative will arrange for the JS to be served on the maintenance payer. If she does not have a legal representative, the maintenance payee can request a court bailiff to serve the JS for her.

<p>14</p>	<p>(A)6: If the JS is successfully served, the maintenance payer has to attend the hearing on the appointed date. The maintenance payee (and her legal representative, if any) also has to attend the hearing. In the hearing:</p> <p>(a) the maintenance payer has to explain why he does not make payments to the maintenance payee. The court may, if it sees fit, order the variation of the maintenance order in the same hearing;</p> <p>(b) if the maintenance payer does not provide the court with a reasonable excuse, the court may (1) order him to settle the maintenance arrears by instalments, or (2) commit him to prison until he has paid the arrears, or (3) suspend the committal order on condition that he pays the arrears within a specified period of time; or</p> <p>(c) if the maintenance payer fails to attend, the judge may adjourn the summons to a specified time on a specified day and order the maintenance payer to attend (“Order to attend”) at that time on that day. (Go to step (A)8.)</p>
<p>14</p>	<p>(A)7: If the JS cannot be served on the maintenance payer, then the hearing will be adjourned sine die. The maintenance payee and/or her legal representative, if any, will have to conduct investigation on the whereabouts of the maintenance payer. If he can be located, the legal representative will restore the JS and a new date for the hearing will be fixed. Then repeat step (A)5.</p>
<p>14 – 22</p>	<p>(A)8: Following (A)6(c), the Order to attend will be served on the maintenance payer personally as in (A)5.</p>
<p>22</p>	<p>(A)9: If the Order to attend is successfully served, the maintenance payer has to attend the hearing on the appointed date. The maintenance payee (and her legal representative, if any) also has to attend this adjourned hearing. In the hearing:</p> <p>(a) same as (A)6(a);</p> <p>(b) same as (A)6(b); or</p> <p>(c) (i) if the maintenance payer fails to attend the hearing, the court will issue a warrant of arrest (WA) to bring him to the court for examination on his means, or (ii) if the maintenance payer attends but fails to show cause why an order of commitment should not be made against him, the judge may make an order for the commitment of the maintenance payer.</p>
<p>22</p>	<p>(A)10: If the Order to attend cannot be served on the maintenance payer, same as (A)7 above.</p>

Proposed revised judgment summons procedure:
first JS to be served personally and second JS to be served by any
mode of service as ordered by the court

<i>Week</i>	<i>Course of action (B)</i>
<u>1</u>	(B)1: Same as (A)1.
<u>3</u>	(B)2: Same as (A)2.
<u>3</u>	(B)3: Same as (A)3.
<u>4 – 6</u>	(B)4: Same as (A)4.
4 – 14	(B)5: Same as (A)5 except that the JS will be served on the maintenance payer personally not less than 5 clear days before the hearing, instead of 10 days in (A)5.
<u>14</u>	(B)6: If the JS is successfully served, the maintenance payer has to attend the hearing on the appointed date. The maintenance payee (and her legal representative, if any) also has to attend the hearing. In the hearing: (a) same as (A)6(a); (b) same as (A)6(b); or (c) if the maintenance payer fails to attend, the judge may adjourn the summons to a specified time on a specified day and order the maintenance payer to attend (“Order to attend”) the hearing on that day. The Order to attend is to be served on the maintenance payer not less than 5 clear days before the adjourned hearing. This order can be served on the maintenance payer by any mode of service as the court may consider appropriate. (Go to (B)8.)
<u>14</u>	(B)7: If the JS cannot be served on the maintenance payer, the maintenance payee may consider adopting course of action (C).
14 – 22	(B)8: Following (B)6(c), the Order to attend will be served on the maintenance payer by the mode of service ordered by the court.
<u>22</u>	(B)9: If the Order to attend is successfully served, same as (A)9.
<u>22</u>	(B)10: If the Order to attend cannot be served successfully (but this is unlikely to happen as it is unlikely that the court will order a mode of service that does not work), the maintenance payee may consider adopting course of action (C).

**Proposed revised judgment summons procedure:
issuance of warrant of arrest (“WA”)**

<i>Week</i>	<i>Course of action (C)</i>
1	(C)1: Same as (A)1.
3	(C)2: Same as (A)2.
3	(C)3: To sue for arrears of maintenance, the maintenance payee (or legal representative, if any) files an application for a WA as well as for a JS.
6	(C)4: The maintenance payee (and her legal representative, if any) will have no need to attend the hearing in which the court considers her application unless the court considers her attendance to be necessary. If the court has reasonable cause to believe that a JS may be ineffective to secure the maintenance payer’s attendance, it can order that the maintenance payer be arrested and brought before the court before the expiry of the day after the day of arrest. However, the exact date of the hearing is to be determined by the court. The court may also issue a prohibition order that prohibits the maintenance payer from leaving Hong Kong.
6 – 16	(C)5: The JS is being served as per (A)5. The WA is being executed by court bailiffs.
Any time after Week 6	(C)6: If the maintenance payer is arrested in the morning, the hearing will usually take place in the afternoon. If the maintenance payer is arrested in the afternoon, the hearing will usually take place the next morning. The hearing must be heard within 24 hours of the arrest in any event. The maintenance payee and/or her legal representative also has to attend the hearing. In the hearing: (a) same as (A)6(a); or (b) same as (A)6(b).
	(C)7: If the maintenance payer cannot be arrested, no further action is possible.