

立法會
Legislative Council

LC Paper No. CB(2)1872/00-01

Ref : CB2/BC/14/00

**Paper for the House Committee meeting
on 22 June 2001**

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

Purpose

This paper reports on the deliberations of the Bills Committee on Attachment of Income Orders (Amendment) Bill 2001.

Background

2. An attachment of income order (AIO) is a court order requiring an "income source" (e.g. an employer or a tenant) to deduct the maintenance payment from the maintenance payer's income, and pay the deductions direct to the maintenance payee. It enables a maintenance payee to receive punctual payments without being subject to the maintenance payer's mercy. The AIO Scheme started to operate in April 1998. During the last two years, only 35 AIOs were issued while the court had issued 904 judgment summonses in connection with maintenance arrears.

3. In order to address the difficulties encountered by maintenance payees in collecting and enforcing maintenance payments, an Inter-departmental Working Group was set up in May 1999 to review the law and administrative measures affecting maintenance payees. The Working Group published its report in May 2000. A summary of its recommendations, which have been accepted by the Administration, is in **Appendix I**. Amendments to the ordinances dealing with maintenance are required to implement two of the Working Group's recommendations.

The Bill

4. The Bill seeks to amend the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) and the Matrimonial Proceedings and Property Ordinance (Cap. 192) to -

- (a) relax the circumstances in which AIOs can be made under the Ordinances; and
- (b) provide that rules made under the Ordinances may empower the court to dispense with or relax any procedure or abridge any time limits specified in the rules under certain circumstances.

The Bills Committee

5. The House Committee agreed at its meeting on 20 April 2001 to form a Bills Committee to study the Bill. Under the chairmanship of Hon Albert HO Chun-yan, the Bills Committee held three meetings with the Administration. The membership of the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

6. The main deliberations of the Bills Committee are set out in the following paragraphs.

Shortcomings of existing provisions

7. Members note that at present, the court cannot make an AIO before a maintenance payer has defaulted in payment; and even after his default, the court can issue an AIO only where it is satisfied that there is no reasonable excuse for the default. Such restrictions undermine the effectiveness of the AIO Scheme in achieving its objective of protecting maintenance payees from irresponsible payers.

Proposed amendments

8. Clause 2 of the Bill amends the Guardianship of Minors Ordinance to relax the circumstances in which an AIO can be made. If the proposed amendment is enacted, subject to the condition that there is income capable of being attached, an AIO can be made where a maintenance order has been made and where -

- (a) the court is satisfied that the maintenance payer has without reasonable excuse failed to make any payment pursuant to a maintenance order, or
- (b) the court has reasonable ground to believe that the maintenance payer will not make full and punctual payment in compliance with a maintenance order, or

- (c) the maintenance payer and the payee agree to make an AIO.

In addition, an AIO can in future be made in the same hearing in which a maintenance order is made or varied and it can be made by the court on its own motion or on application by the maintenance payer, payee or both.

9. Clause 2 also provides for the court to be empowered to dispense with or relax any procedures or abridge any time limits currently specified in the Attachment of Income Order Rules where the court is satisfied that it is fair and reasonable to do so in a particular case. This provision is in response to feedback received during the review by the Working Group that there are individual cases where certain steps can be omitted or the time limit may be relaxed in the light of the circumstances of the cases in order to reduce the time in processing AIO applications.

10. Clauses 3 and 4 of the Bill propose similar amendments to the Separation and Maintenance Orders Ordinance and the Matrimonial Proceedings and Property Ordinance respectively.

Notification of change of address/employment

11. Members note that at present, the law already requires a maintenance payer to notify the maintenance payee of any change in address within 14 days and failure to do so without reasonable excuse would constitute an offence. They have asked the Administration to consider requiring a maintenance payer to notify a maintenance payee of any change in employment where an AIO is in force in respect of him in order that a new AIO could be made as soon as possible.

12. The Administration holds the view that a criminal offence should not be created unless it is absolutely necessary for achieving the policy objective and in the present case, the policy objective is already achieved by requiring the maintenance payer to notify the maintenance payee of any change of address. As long as the maintenance payer's address is available, recovery actions can be taken against him when he fails to pay and formation on whether or not he has changed employment is unnecessary.

13. In view of members' concern, the Administration has proposed that a new arrangement be introduced as follows -

- (a) a maintenance payer, when he ceases to receive any income from an income source to whom an AIO has been issued, shall apply to the court (with a copy to the maintenance payee) for a new AIO to be issued to another income source of his. The application has to be accompanied by his statement of means and the new income source's statement of verification. If he does not wish to apply for a new AIO in respect of the new income source, he should make a

statement to the court, with a copy to the maintenance payee, on the reasons;

- (b) if the maintenance payer, following the cesser, does not have any income capable of being attached, he shall file in court (with a copy to the maintenance payee) a statement of means together with a statement that he does not have any income capable of being attached;
- (c) the maintenance payer shall take action under either (a) or (b) above, as appropriate, within 14 days after the cesser. If he has taken action under (b), he shall take action under (a) within 14 days after he has acquired any new income capable of being attached; and
- (d) a maintenance payer who fails to comply with (c) without reasonable excuse or knowingly make a false statement commits an offence.

14. Members support the proposed arrangement. They note that it can be implemented by amending the Attachment of Income Order Rules made by the Chief Justice and no amendment to the primary legislation is required. The Administration expects to complete drafting of the amendment rules within a short time and plans to gazette them before the next Legislative Council session. The Administration envisages that the new rules will take effect from about November 2001 at which time the Attachment of Income Orders (Amendment) Ordinance 2001 will also be brought into operation by notice published in the Gazette.

Suggestions for further relaxation of the circumstances where an AIO could be issued

15. Members have suggested that an AIO could be issued where the maintenance payee would likely to be abused by the maintenance payer when collecting or demanding payment. The Administration has pointed out that the maintenance payee can avoid such situation by making an application to the court for ordering the maintenance to be paid through banks. The court normally makes such an order on application.

16. The Administration has also explained that since the purpose of AIOs is to ensure full and punctual payment, the making of AIOs should be confined to circumstances where there is doubt about the maintenance payer's willingness to make full and punctual payments. Such circumstances are already adequately covered by the Bill, which proposes that an AIO may be made where a court is satisfied that there are reasonable grounds to believe that the payer will not make full and punctual payment in compliance with the maintenance order.

Members' views

17. Members agree that even though the scope of the Bill is rather limited, it should be able to help a small number of cases and therefore should be supported.

18. In response to members' request, the Administration has provided a progress report on the implementation of the Working Group's recommendations for their information. Members note that some of the recommendations have already been implemented while action is in progress in respect of the others. For instance, the drafting of amendments to the Matrimonial Causes Rules and District Court Rules to relax the requirement for judgment summonses to be served personally and to enable the court to order payment of maintenance arrears up to the date of the court hearing has reached an advanced stage. Members note that the Panel on Home Affairs would monitor the implementation of the various improvement measures.

19. Some members maintain the view that a maintenance board should be set up to collect and enforce maintenance payments on behalf of the maintenance payees, even though the Working Group does not support the proposal. As it is outside the scope of the Bill, the Bills Committee agrees that it should be pursued separately and followed up by the Panel on Home Affairs.

Committee Stage amendments

20. The Committee Stage amendments (CSAs) to be moved by the Administration are in **Appendix III**. These CSAs are technical amendments in response to suggestions made by the Bills Committee.

Recommendation

21. The Bills Committee supports the Bill and recommends that the Second Reading debate on the Bill be resumed on 4 July 2001.

Advice sought

22. Members are invited to support the recommendation in paragraph 21 above.

To address the difficulties encountered by divorcees in collecting and enforcing maintenance, an Inter-departmental Working Group (WG) has made the following recommendations:

- (a) to relax the circumstances for the issue of Attachment of Income Orders;
- (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;
- (c) court Bailiffs to serve judgement summonses for maintenance payees who are not legally represented;
- (d) the court to order that maintenance specified in maintenance orders be paid into court in appropriate cases;
- (e) to empower the court to impose a surcharge against defaulting maintenance payers;
- (f) to inform non-governmental organizations 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 known address;
- (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;

- (h) to conduct a pilot scheme to synchronize the procedures in processing applications for CSSA and legal aid;
- (i) Social Welfare Department to streamline the procedures in referring single-parent families to obtain timely counseling and family services; and
- (j) to mount publicity and public education measures on matters relating to maintenance.

2. As regards the proposal for a maintenance board, the WG considers that the proposed board will not be able to offer maintenance payees or taxpayers any significant benefits over and above those that can be achieved by improving the existing system. Given this, the WG does not recommend the setting up of such a board.

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

Membership list

| | |
|----------------------|--------------------------------|
| Chairman | Hon Albert HO Chun-yan |
| Members | Hon Cyd HO Sau-lan |
| | Hon CHAN Yuen-han |
| | Hon CHOY So-yuk |
| | Hon LAW Chi-kwong, JP |
| | Dr Hon TANG Siu-tong, JP |
| | Hon LI Fung-ying, JP |
| | Hon WONG Sing-chi |
| | Hon Audrey EU Yuet-mee, SC, JP |
| | (Total : 9 Members) |
| Clerk | Ms Doris CHAN |
| Legal Adviser | Mr LEE Yu-sung |
| Date | 18 May 2001 |

ATTACHMENT OF INCOME ORDERS (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 2 | <p>(a) In paragraph (a) -</p> <ul style="list-style-type: none">(i) in the proposed section 20(1A)(a), by adding "and conduct" after "record";(ii) in the proposed section 20(1A)(b), by adding "record and" after "past". <p>(b) In paragraph (b), in the proposed section 20(2A), by deleting "an" after "after" and substituting "a".</p> |
| 3 | <p>(a) In paragraph (a) -</p> <ul style="list-style-type: none">(i) in the proposed section 9A(1A)(a), by adding "and conduct" after "record";(ii) in the proposed section 9A(1A)(b), by adding "record and" after "past". <p>(b) In paragraph (b), in the proposed section 9A(2A), by deleting "an" after "after" and substituting "a".</p> |

Clause

Amendment Proposed

- 4
- (a) In paragraph (a) -
 - (i) in the proposed section 28(1A)(a), by adding "and conduct" after "record";
 - (ii) in the proposed section 28(1A)(b), by adding "record and" after "past".
 - (b) In paragraph (b), in the proposed section 28(2A), by deleting "an" after "after" and substituting "a".