

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for  
Home Affairs

| <u>Clause</u> | <u>Amendment Proposed</u>  |
|---------------|--|
| 4             | <p>(a) In the proposed section 20A(1) -</p> <p>(i) by adding "and section 20B" after "this section";</p> <p>(ii) by deleting the definition of "judgment rate".</p> <p>(b) In the proposed section 20A(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".</p> <p>(c) By deleting the proposed section 20A(3) and substituting -</p> <p>"(3) For the purposes of subsection (2) -</p> <p>(a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of</p> |

section 50 of the District  
Court Ordinance (Cap. 336);

(b) the interest under subsection  
(2) shall be calculated in  
accordance with that section  
50; and

(c) for the purposes of that  
section 50, the date on which  
payment is due as specified by  
the maintenance order shall be  
treated as the date of the  
judgment debt.

(4) The judgment debtor is liable to pay  
the interest under subsection (2).

(5) If any payment under a maintenance  
order is not paid and interest in respect of  
the arrears has accrued under subsection (2),  
and subsequently the judgment debtor makes  
payment, the payment is deemed to be made in  
the following order in or towards the  
discharge of -

(a) interest accrued under  
subsection (2);

(b) surcharge payable under  
section 20B;

(c) if there are any proceedings  
instituted for enforcing the

maintenance order, the fixed costs ordered by the court to be paid under those proceedings;

(d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence in which they arise (that is, the most recent arrears will be discharged first);

(e) if a judgment summons is issued, the debt in respect of which the judgment summons is issued.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may apply to the court not to pay the interest, setting out the grounds in the application."

(d) In the proposed section 20A(4), by deleting "(4) In determining" and substituting "(7) If an application is made under subsection (6), in deciding".

(e) By adding after the proposed section 20A(7) -

"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may within 30 days after the date of the decision, appeal against that decision under section 63 of the District Court Ordinance (Cap. 336).

(9) An appeal under subsection (8) shall not be heard unless the amount of the interest which is the subject-matter of the appeal has been paid.

(10) On hearing an appeal under subsection (8) the Court of Appeal may -

- (a) confirm, cancel or reduce the interest;
- (b) if it cancels or reduces the interest, order the repayment to the judgment debtor of the amount of interest cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."

New By adding -

**"20B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the

judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor in any proceedings instituted for enforcing the maintenance order, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(3) The court may specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(4) A surcharge due and payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District

Court.

(5) A judgment debtor who is aggrieved by an order to pay a surcharge under subsection (1) may within 30 days after the date of the order, appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336)

(6) An appeal under subsection (5) shall not be heard unless the amount of the surcharge which is the subject-matter of the appeal has been paid.

(7) On hearing any appeal under subsection (5) the Court of Appeal may -

- (a) confirm, cancel or reduce the surcharge;
- (b) if it cancels or reduces the surcharge, order the repayment to the judgment debtor of the amount of surcharge cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."

7 (a) In the proposed section 9B(1) -

- (i) by adding "and section 9C" after "this section";

- (ii) by deleting the definition of "judgment rate".
- (b) In the proposed section 9B(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
- (c) By deleting the proposed section 9B(3) and substituting -
  - "(3) For the purposes of subsection (2) -
    - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
    - (b) the interest under subsection (2) shall be calculated in accordance with that section 50; and
    - (c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the

judgment debt.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

- (a) interest accrued under subsection (2);
- (b) surcharge payable under section 9C;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the fixed costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence in which they arise (that is, the most recent



arrears will be discharged  
first);

- (e) if a judgment summons is issued, the debt in respect of which the judgment summons is issued.

(6) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) may apply to the court not to pay the interest, setting out the grounds in the application. "

- (d) In the proposed section 9B(4), by deleting "(4) In determining" and substituting "(7) If an application is made under subsection (6), in deciding".

- (e) by adding after the proposed section 9B(7) -  
"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may within 30 days after the date of the decision, appeal against that decision under section 63 of the District Court Ordinance (Cap. 336).

(9) An appeal under subsection (8) shall not be heard unless the amount of the interest which is the subject-matter of the appeal has been paid.

(10) On hearing an appeal under

subsection (8) the Court of Appeal may -

- (a) confirm, cancel or reduce the interest;
- (b) if it cancels or reduces the interest, order the repayment to the judgment debtor of the amount of interest cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."

New By adding -

**"9C. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor in any proceedings instituted for enforcing the maintenance order, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(3) The court may specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(4) A surcharge due and payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(5) A judgment debtor who is aggrieved by an order to pay a surcharge under subsection (1) may within 30 days after the date of the order, appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).

(6) An appeal under subsection (5) shall not be heard unless the amount of the surcharge which is the subject-matter of the appeal has been paid.

(7) On hearing any appeal under subsection (5) the Court of Appeal may -

- (a) confirm, cancel or reduce the surcharge;
- (b) if it cancels or reduces the surcharge, order the repayment to the judgment debtor of the amount of surcharge cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."

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- (a) In the proposed section 53A(1) -
  - (i) by adding "and section 53B" after "this section";
  - (ii) by deleting the definition of "judgment rate".
- (b) In the proposed section 53A(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
- (c) By deleting the proposed section 53A(3) and substituting -
  - "(3) For the purposes of subsection (2) -
    - (a) the arrears in respect of each periodical payment, secured

periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);

(b) the interest under subsection (2) shall be calculated in accordance with that section 50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment debt.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under

subsection (2);

- (b) surcharge payable under section 53B;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the fixed costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence in which they arise (that is, the most recent arrears will be discharged first);
- (e) if a judgment summons is issued, the debt in respect of which the judgment summons is issued.

(6) A judgment debtor who considers he has reasonable grounds not to pay the interest under subsection (2) may apply to the court not to pay the interest, setting out the grounds in the application."

(d) In the proposed section 53A(4), by deleting "(4) In determining" and substituting "(7) If an application is made under subsection (6), in deciding".

(e) by adding after the proposed section 53A(7) -  
"(8) A judgment debtor who is aggrieved by a requirement under subsection (7) to pay interest may within 30 days after the date of the decision, appeal against that decision under section 63 of the District Court Ordinance (Cap. 336).

(9) An appeal under subsection (8) shall not be heard unless the amount of the interest which is the subject-matter of the appeal has been paid.

(10) On hearing an appeal under subsection (8) the Court of Appeal may -

- (a) confirm, cancel or reduce the interest;
- (b) if it cancels or reduces the interest, order the repayment to the judgment debtor of the amount of interest cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the

hearing.".

New By adding -

**"53B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor in any proceedings instituted for enforcing the maintenance order, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(3) The court may specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(4) A surcharge due and payable under this section is recoverable as a civil debt



due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(5) A judgment debtor who is aggrieved by an order to pay a surcharge under subsection (1) may within 30 days after the date of the order, appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).

(6) An appeal under subsection (5) shall not be heard unless the amount of the surcharge which is the subject-matter of the appeal has been paid.

(7) On hearing any appeal under subsection (5) the Court of Appeal may -

- (a) confirm, cancel or reduce the surcharge;
- (b) if it cancels or reduces the surcharge, order the repayment to the judgment debtor of the amount of surcharge cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks

fit as to the costs of the hearing.".

- 11 (a) In the proposed section 28AA(1) -
- (i) by adding " and section 28AB" after "this section";
  - (ii) by deleting the definition of "judgment rate".
- (b) In the proposed section 28AA(2), by deleting everything after "with the maintenance order," and before "interest" and substituting "the judgment creditor is entitled to".
- (c) By deleting the proposed section 28AA(3) and substituting -
- "(3) Subject to subsection (5) and for the purposes of subsection (2) -
    - (a) the arrears in respect of each periodical payment, secured periodical payment or payment of a lump sum, as the case may be, under a maintenance order shall be treated as a judgment debt for the purposes of section 50 of the District Court Ordinance (Cap. 336);
    - (b) the interest under subsection (2) shall be calculated in accordance with that section

50; and

(c) for the purposes of that section 50, the date on which payment is due as specified by the maintenance order shall be treated as the date of the judgment debt.

(4) The judgment debtor is liable to pay the interest under subsection (2).

(5) If the court grants leave, on the application of a judgment creditor for leave under section 12 of the Ordinance, to enforce arrears of maintenance which became due for more than 12 months, the interest under subsection (2) is to be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(6) If any payment under a maintenance order is not paid and interest in respect of the arrears has accrued under subsection (2), and subsequently the judgment debtor makes payment, the payment is deemed to be made in the following order in or towards the discharge of -

(a) interest accrued under subsection (2);

- (b) surcharge payable under section 28AB;
- (c) if there are any proceedings instituted for enforcing the maintenance order, the fixed costs ordered by the court to be paid under those proceedings;
- (d) any sums from time to time falling due under the maintenance order, with the sums discharged in the reversed chronological sequence in which they arise (that is, the most recent arrears will be discharged first);
- (e) if a judgment summons is issued, the debt in respect of which the judgment summons is issued.

(7) A judgment debtor who considers that he has reasonable grounds not to pay the interest under subsection (2) apply to the court not to pay the interest, setting out the grounds in the application."

- (d) In the proposed section 28AA(4), by deleting

"(4) In determining" and substituting "(8) If an application is made under subsection (7), in deciding".

(e) by adding after the proposed section 28AA(8) -

"(9) A judgment debtor who is aggrieved by a requirement under subsection (8) to pay interest may within 30 days after the date of the decision, appeal against that decision under section 63 of the District Court Ordinance (Cap. 336).

(10) An appeal under subsection (9) shall not be heard unless the amount of the interest which is the subject-matter of the appeal has been paid.

(11) On hearing an appeal under subsection (9) the Court of Appeal may -

- (a) confirm, cancel or reduce the interest;
- (b) if it cancels or reduces the interest, order the repayment to the judgment debtor of the amount of interest cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."

New By adding -

**"28AB. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor in any proceedings instituted for enforcing the maintenance order, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) Subject to subsection (4), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 30% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(3) The court may specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(4) If the court grants leave, on the application of a judgment creditor for leave

under section 12 of the Ordinance to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) is to be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(5) A surcharge due and payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(6) A judgment debtor who is aggrieved by an order to pay a surcharge under subsection (1) may within 30 days after the date of the order, appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).

(7) An appeal under subsection (6) shall not be heard unless the amount of the surcharge which is the subject-matter of the appeal has been paid.

(8) On hearing any appeal under subsection (6) the Court of Appeal may -

- (a) confirm, cancel or reduce the surcharge;
- (b) if it cancels or reduces the surcharge, order the repayment to the judgment debtor of the amount of surcharge cancelled or reduced (without payment of interest thereon);
- (c) make such order as it thinks fit as to the costs of the hearing."